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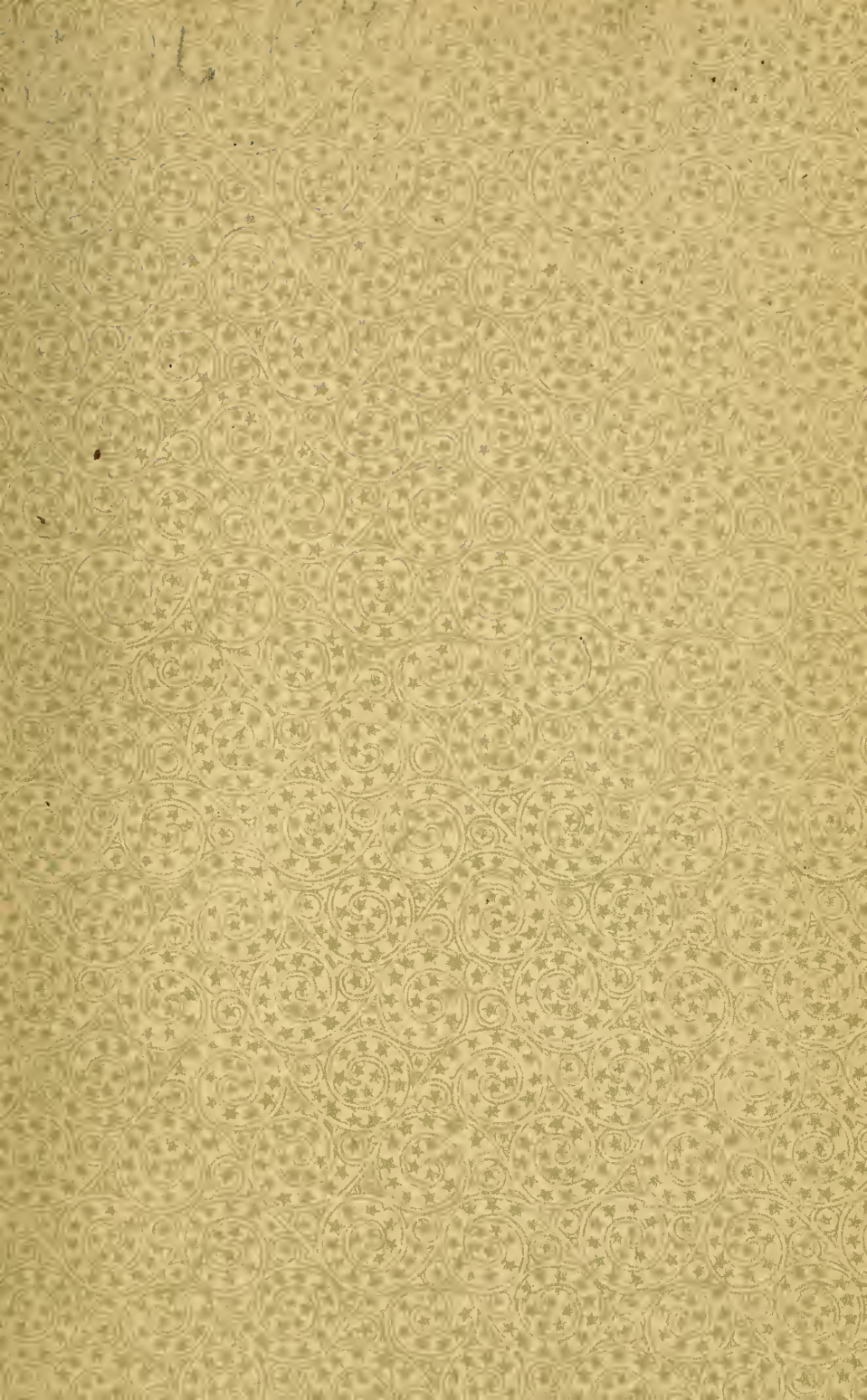
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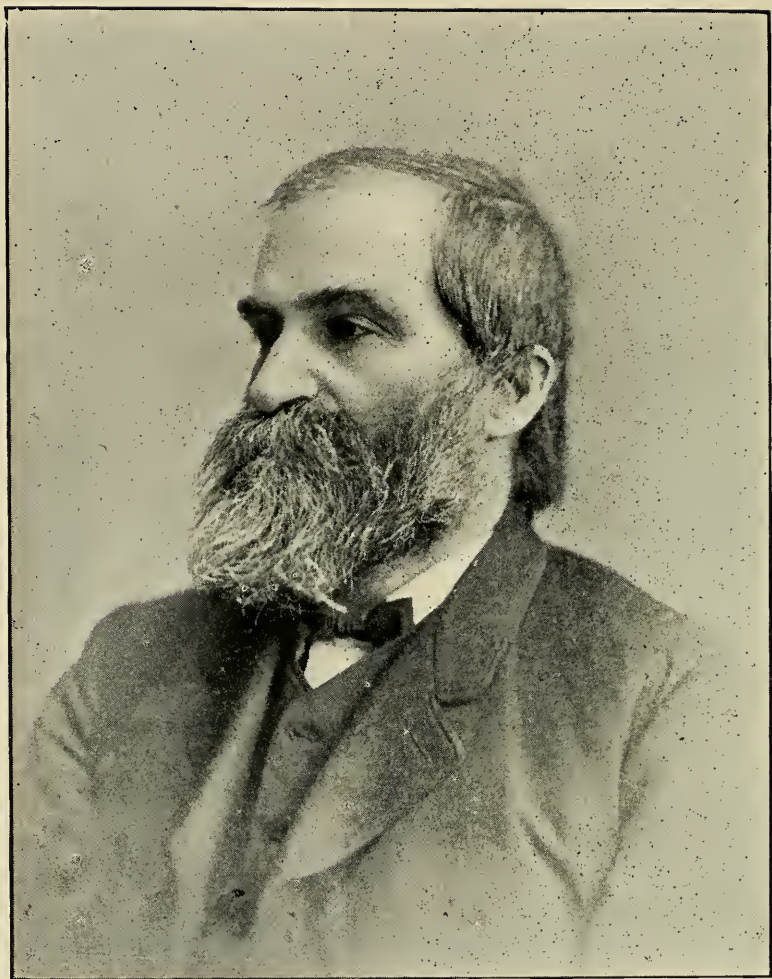


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EX-CHIEF JUSTICE CHARLES DOE,
SUPREME COURT OF NEW HAMPSHIRE.

MEDICO-LEGAL STUDIES,

VOLUME IV.

BY

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Of the New York Bar,

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prudence, &c., &c.*

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M. L. A.

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To my Goodfriend

Dr A Seem

With Cordial regards

Clark Bell

Xmas 98.

This volume is one of an edition of three hundred, of which this is No.—157

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DEDICATION.

To

PROFESSOR R. OGDEN DOREMUS.

EX-PRESIDENT, AND FOR MANY YEARS CHEMIST OF THE
MEDICO-LEGAL SOCIETY; PROFESSOR OF CHEMISTRY
AND TOXICOLOGY, NEW YORK CITY.

Permit me, honored sir, to dedicate to you this volume of Medico-Legal Studies. For more than a quarter of a century we have been co-workers in Medico-Legal Studies here. The splendid record of your professional work in chemistry and toxicology has placed your name in the front rank of the chemists of the world. I am both proud and glad; to name you as the Nestor of your profession on this side the Atlantic, and I well know that the chemists of all the world will recognize your labors as deserving the thanks and admiration of all students of toxicological chemistry in all lands.

CLARK BELL.

NEW YORK, January, 1898.

PREFACE.

Volume three of my works, entitled "Medico-Legal Studies," was published in January, 1893, some five years since.

Such of my work relating to Forensic Medicine, during the years 1893 to 1897, have been compiled mainly in volumes four and five of the same series.

Circumstances have prevented the publication of this volume since 1895, when it was quite ready for publication, until volume five was issued, and the two volumes appear together.

I have reproduced, in this volume, such illustrations as I have from time to time brought out in the Medico-Legal Journal and in volume one of the History of the Supreme Court of the States and Provinces of North America.

NEW YORK, January, 1898.

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THE McNAGHTEN CASE.*

BY CLARK BELL, ESQ.

The McNaghten case created a great sensation in England in the year 1843, and was the occasion for the remarkable *obiter dicta* of the English judges regarding the defense of insanity in criminal cases, which has dominated English judicial thought since that day. All the facts relating to it are full of interest, not only to bench and bar, but to all students of this branch of forensic medicine.

McNaghten shot Mr. Drummond in 1843, mistaking him for Sir Robert Peel.

He was indicted for murder, and tried before Chief Justice Tyndall of the English Common Pleas, and was defended by the late Lord Chief Justice Cockburn, then at the bar and prior to his elevation to the bench, and was prosecuted by Sir William Follett.

McNaghten was undoubtedly insane, and labored under the delusion that Sir Robert Peel was plotting for and intended his destruction.

Cockburn's defense has well been called one of the most masterly in the annals of the English bar.

Sir Robert Peel did not even know McNaghten.

There was no question there, upon that trial, of the right and wrong theory, as Drummond well knew right from wrong, and yet he was dominated by and acted wholly under the influence of his insane delusion.

He also well knew the consequences of his act.

*Read before the Medico-Legal Society May 13, 1892.

These facts appearing, Chief Justice Tyndall appealed to Sir William Follett to consent to a verdict of acquittal, which was conceded by that learned jurist, and the verdict of not guilty was accordingly pronounced.

That acquittal was based upon the law of England as it then existed as recognized by the highest legal authorities, and the extraordinary action of the House of Lords, in calling upon the judges of the kingdom to express their opinions upon the law as applicable to insanity in criminal cases, followed.

It was extra judicial, wholly without authority of law, absolutely without precedent, and that precedent has never been since followed in England or elsewhere.

If the jury had acquitted Guiteau on the trial for the assassination of President Garfield, and the Senate of the United States had called upon the judges of this nation to express their opinions upon the law governing such cases, and the judges had responded by a convention and concerted action, it would have been quite an analogous proceeding, and would have been precisely as illegal, as extra judicial, as the example set by the House of Lords of England on that occasion.

How such a result as was reached by the English judges ever came to have any recognition in the English courts has always been an inexplicable marvel.

It was doubtless wholly due to popular clamor that the Lords acted.

The opinions of the judges were, in the largest sense, mere *obiter dictum*, and lacked every essential element of either authority or precedent. Their action was not the decision of a court of competent jurisdiction in any case or action pending before them, and of which they had jurisdiction, and yet their conclusion has, for nearly half a century, dominated English judicial thought and action and greatly affected the

American bench, until Judge Doe, of New Hampshire, overruled that part it called the right and wrong theory in that American State, about a quarter of a century ago.

The conclusions of the English judges have been called the doctrine of the McNaghten case, but, as shown, was rather a doctrine that grew up as a *sequella* of or to the McNaghten case.

I am glad to give the views of Mr. Sergeant Ballantine upon this subject, from his interesting book published in London in 1882, which I feel sure will be read with interest by every student of forensic medicine interested in the questions involved.

Mr. Sergeant Ballantine says :

MURDER OF MR. DRUMMOND.

In the commencement of the year 1843, as a gentleman named Drummond was walking down Parliament Street, he was fatally wounded by a pistol-shot fired by a man by the name of MacNaghten, a Scotchman. It was clear that he was mistaken by him for Sir Robert Peel, whom it was his intention to have killed. As Mr. Drummond was a man generally respected and of the most inoffensive habits, it was not unnatural that a storm of indignation should arise against the perpetrator of the act, whilst the patience exhibited by his victim during the few days that he survived the attack added to the general sympathy of the public.

MacNaghten was placed upon his trial for murder in the following February, Sir Nicholas Conyngham Tindal, Chief Justice of the Common Pleas, presiding. I have had occasion to refer to this Judge, although not at any length, when giving an account of the Courvoisier trial. He was certainly not a man of startling characteristics, but upon the bench presented a singularly calm and equable appearance. I never saw him yield to irritability, or exhibit impatience. I should say, in fact, that he was made for the position that he filled, and sound law and substantial justice were sure, as far as human power could prevail, to be administered under his presidency.

It required a judge of this calibre to control the violent feelings of indignation launched not unnaturally against the accused. Sir William Follett conducted the prosecution, and the late Lord Chief Justice, then Mr. Cockburn, was retained for the defense.

The facts were easily proved, and the only question that was in issue was whether the prisoner at the time of the commission of the crime was of sound mind, and the onus of showing the contrary practically devolved upon the prisoner's counsel. *MacNaghten had been treated as a lunatic,

*This is not so theoretically, as the indictment in terms declares the accused to be of sound mind and understanding.

and he appears to have imagined that Sir Robert Peel was bent upon his destruction, which he intended to prevent by the assassination. There was no ground whatever for even the belief that Sir Robert Peel knew him.

In a case not altogether analogous, but bearing some similiarity to it, Erskine had made a most masterly and argumentative speech, dealing with the different phases of insanity, and Cockburn, in his defense of MacNaghton, had the advantage of that great advocate's views and treatment of the subject. This, however, did not detract from the merit of one of the most masterly arguments ever heard at the English bar. Several witnesses were called, and the facts that I have briefly stated were fully proved. Before the evidence was concluded, the Chief Justice appealed to Sir William Follett, who admitted that he must submit to a verdict acquitting the prisoner upon the ground of insanity, and this verdict was accordingly pronounced. A storm of indignation followed it. Mad or not, the prisoner ought to have been hanged ! Such was no uncommon expression, and a general denunciation of mad doctors, and some not very complimentary remarks upon lawyers, might not infrequently be heard. This outcry resulted in a very singular proceeding on the part of the House of Lords, which had no precedent, and fortunately has never been repeated. The judges were summoned by their lordships to express their opinion upon the law applicable to insanity in criminal cases. It seems to me surprising that they did not point out that such a proceeding was extra-judicial, and that their opinions could only properly be given upon certain facts arising before them in their judicial capacity, and that what was asked of them was to make a law in anticipation of facts that might hereafter arise. The same proceeding also might be adopted in relation to any subject, civil or criminal. However, the judges went and sat in solemn conclave, but, as might be expected, being called upon to found abstract opinions with no facts to go upon, they have not greatly assisted the administration of justice.*

The important points propounded by the judges seem to be as follows :

The only ground upon which an alleged lunatic is entitled to an acquittal is that he did not know the difference between right and wrong in the act that he committed. If they had proceeded to say upon what principles this question was to be determined, some benefit might have arisen from their opinions.

The judges further say that, although a person may, in a particular matter, act under an insane delusion, and act in consequence thereof, he is equally liable with a person of sane mind. I presume this to mean that unless it be shown that the delusion destroyed his knowledge of the difference between right and wrong, which is to be discovered and proved independently of the admitted delusion, he must be considered of sane mind. If these dicta are to be received as law, then a totally different principle governs civil and criminal cases, and a person incapable of making a will or executing a deed may, nevertheless, be liable to be executed for the commission of what in a sane person would be a crime. However startling this proposition is, it cannot be controverted, and it appears to me that the subject is one worthy of further consideration and much more careful analysis

*Mr. Justice Maule pointed out this difficulty.

than have ever been applied to it. In the observations that I have already made, and in those that follow, I do not pretend to lay down any proposition or dictate any solution of the difficulty, but merely wish to suggest certain matters that in the course of my practice have presented themselves to my mind, with a view of attracting the attention of better-informed and more experienced men.

That insanity exists to a most deplorable extent is testified by the numerous establishments, both public and private, for the care of lunatics, and the question of how far mental derangement, admitted to exist upon a particular point, affects the conduct of an individual beyond the scope of that point, is a subject worthy of the research both of medical men and lawyers. Doctors have introduced the term "uncontrollable impulse," and an excuse has been sought under this term for violent bursts of passion arising from natural causes ; but are not such symptoms also the result of insanity ? Have we not numerous instances in which under such influences the victims have destroyed themselves ? It is not difficult to presume that they knew they were doing wrong, and, indeed, the cunning that in many cases attends their acts indicates that they did ; but assuming one of the qualities of the sane human mind to be self-restraint, and supposing this barrier has been removed by insanity, ought the sufferer to be held criminally liable for his acts, although evidence existed that he was conscious of the difference between right and wrong ?

When Ravaiillac assassinated Henry IV. of France, he believed that in doing so he was commending himself to God, and as many enthusiasts, at all times and in all countries, have acted under such impressions, it would be a dangerous doctrine to declare that, because the sense of right and wrong had disappeared, a criminal should be deemed irresponsible ; and yet, on the other hand, an utter lunatic may possess a sense of right and wrong in many actions of his life. The case is well known of a madman who was cross-examined by Erskine ineffectually for some time. At last the counsel obtained the clue, and in answer to a question he put, the witness said "I am the Christ." Upon a subsequent occasion, when again cross-examined, he carefully avoided the admission that had defeated him upon the former occasion. He was admittedly a lunatic, but certainly if he had been charged with a crime it might fairly have been contended that he knew the difference between right and wrong.

As I have said already, a civil act is destroyed by proof that the person performing it was at the time subject to mental delusion upon one subject, although in every other perfectly reasonable. The only principle upon which this rule can be founded is that the mind is one and entire, and, if diseased, it is impossible, whatever may be the external signs, to say to what extent and in what direction the disease extends. If this be good reasoning, surely it is equally applicable to the mind of a person charged with a crime. I cannot think that, where an insane delusion is clearly proved, although numerous facts may be brought forward to show that the lunatic distinguished, up to the time of the offense, between right and wrong, that he ought to be consigned to the gallows. The gout that has taken possession of a man's toe suddenly leaps to his heart. When a man believes himself to be the Saviour, how is it possible for human skill to tell

what thought or opinion is likely to control any act of his life? The law must yield to the dispensations of Providence, however much prejudice and passion may seek to sway its administration.

I was witness of the outcry that Drummond's assassination occasioned in a case tried before Baron Alderson at the Central Criminal Court. That very learned judge summed up strongly for an acquittal upon the ground of insanity. The jury, however, took the matter into their own hands, and convicted the prisoner. The jury made earnest recommendations to the Home Secretary, but, nevertheless, the man was executed. It will not, I think, be uninteresting to record here one or two cases involving these questions, and in which I have at different periods of my career been engaged as counsel. One of them was of a very distressing character.

A lady of the name of Ramsbottom, the wife of an eminent physician, herself of middle age and generally respected, was suspected of pilfering from a draper's shop in Baker Street, Portman Square. She was watched, followed, and her person was searched, and several small articles were found concealed in different parts of her dress. She was given into custody, went through the painful ordeal of an inquiry at the Marylebone Police Court, and was committed for trial at the Middlesex Sessions. At the period when this occurred, Mr. Serjeant Adams was the presiding judge. He was thoroughly impartial and knew all the law necessary for his position, but it was not very well packed in the receptacle of his brain, and the particles constantly came out at wrong times and places. The case, however, could hardly have been confused, the facts were perfectly clear, the whole of the lady's life, as far as its history was known, was not only free from reproach, but thoroughly rational. The only point that could be relied upon for the defense was that the articles stolen were so trivial that no sane object could exist for intentional theft, and the only suggestion that could be made in her favor was that she was not responsible for her actions, being compelled by an uncontrollable impulse, or, to use a technical term, that she was the victim of kleptomania, not a very popular defense before a jury of tradesmen. However, after being locked up for some hours, they were discharged without giving a verdict, a result arising probably more from compassion for the lady's husband than any doubt about the facts.

I thought at the time that if, instead of laying a trap for her, the proprietor of the shop had conveyed a hint either to herself or to the doctor, it would have been the kinder course, and subsequent circumstances showed that in reality her conduct was attributable to insane influences, although certainly she knew thoroughly well that she was acting wrongly.

She died very shortly after the ordeal she had undergone, broken down in health and spirit with the shame and disgrace, and I was consulted, after her death had taken place, by Dr. Ramsbottom, under the following circumstances: Every drawer and cupboard in the house was found to be full of new goods, which she must have been in the habit of abstracting during many years, and I believe that in every instance they were contained in their original wrappers. Mrs. Ramsbottom was a religious woman, and I cannot doubt that every Sunday she listened with respect and veneration to the lessons taught in church, and fully realized the commandment of

"Thou shalt not steal." And it is clear that she, by the acts she committed, incurred danger and obtained no advantage. I advised Dr. Ramsbottom not to make the discovery public, and the articles found were distributed amongst different charitable institutions.

Can anyone doubt that insanity irresistibly controlled her conduct ?

Many instances are upon record in which this extraordinary mania is alleged to have developed itself. And one case is known where an attendant always accompanied a lady of high rank when she went out shopping and paid for the articles she stole. Supposing in any of these instances the parties had committed a crime of a different description, would it be just to hold them responsible ? The question is not unimportant, as such acts, if clearly proved, would, as the law now stands, invalidate a will.

Certainly the most remarkable and interesting case connected with mental derangement, in which I acted as counsel, was in connection with the will of a lady named Thwaites. She died at an advanced age, leaving a very large fortune, which she bequeathed to different persons with whom she had associated during her life-time, and none of whom were her relatives ; and her next of kin disputed the will upon the ground that she was insane at the time of making it.

She had inherited the fortune in early life, unexpectedly, upon the death of her husband, and had administered it with judgment and discretion. She was neither niggardly nor profuse. She was charitable without being reckless, and kept her accounts, which were somewhat complicated, with accuracy and in excellent order. No restraint of any kind was ever placed upon her. She played whist, and, I am told, played it fairly well. She endured pain on different occasions with great resignation.* And moreover, there was nothing extraordinary in the disposition of her property, as she had never held much intercourse with her own relatives. Unquestionably, however, she was guilty of some very extraordinary proceedings, and expressed some singular views. She asserted that she had been chosen by our Saviour to receive Him upon His return to earth, and that this event would therefore occur during her life-time, and she indicated the reality of this belief by making very extensive preparations for His reception, principally in the upholstery line, and there was a great deal of absurdity exhibited in the arrangements she made. Lord Penzance, before whom the case was tried, left it to the jury to say whether she was laboring under an insane delusion, and they found that she was, and he accordingly held that her will was invalid. The circumstances of this case suggest reflections as to how far religious opinions, absurd and ridiculous as they may appear to others, are to be accepted as proof of insanity. The main idea, round which every thought and act rotated in her mind, was the approaching return of the Saviour to earth. This surely cannot be treated as insane. The notion that she was selected to receive Him might be the product of vanity, and the misunderstanding of some of the mysterious passages that occur in portions of the Scripture, whilst the preparations she made were only the natural consequences of such a belief on the part of a person of utterly unrefined ideas ; and it is to be noted that she was a woman of no

*Dr. Turner, an old friend of mine and a physician of great eminence at Brighton, gave me an account of her great patience under suffering.

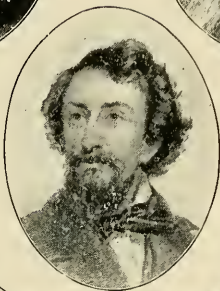
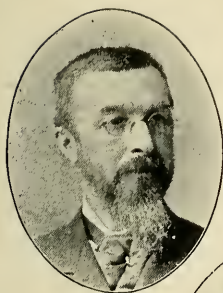
education, and from her earliest youth had been the object of fulsome attentions and flattery.*

But a grave doubt has occurred to me as to whether the belief in question really had full and undivided possession of her mind, and whether there was not rather a pride in putting forward the claim. She sacrificed nothing of personal interest and comfort, and never appeared to undervalue the good things of this world in consequence of the great honor that was in store for her.

These speculations, however, are beside my main object in discussing the subject. For that purpose I assume that a delusion, utterly inconsistent with sanity, had taken possession of her senses, and that, therefore, she was unfit to execute any legal document. In what manner ought she to have been dealt with if she had committed what in a sane person would have been a crime? Her whole life showed that she understood the distinction between right and wrong, and if the issue left to a jury had been narrowed down to that question, unless the fact that she was under a delusion upon the subject of the Saviour's returning to earth and becoming her guest could be treated as evidence that she was unable to tell right from wrong, she must have been convicted.

I have been engaged in many cases of interest since the constitution of the Probate and Divorce Court before the three judges who have severally presided, and, amongst others, the very unhappy one of Lady Mordaunt. This unfortunate lady became insane after a confinement, and continued hopelessly so from that period. This was an instance where the mind was entirely destroyed, and therefore it presented none of those difficulties which I have pointed out in other cases, and which I venture to think deserve the attention both of those who make the laws and those who administer them.

*Sir Roundell Palmer led me upon the first trial, and his speech is well worth the perusal of those who desire to look deeply into this subject.



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RECENT JUDICIAL EVOLUTION AS TO CRIMINAL RESPONSIBILITY OF INEBRIATES.*

BY CLARK BELL, ESQ., PRESIDENT AMERICAN INTERNATIONAL
CONGRESS OF MEDICAL JURISPRUDENCE.

By the common law of England it was conceded the words *non compos* meant a total deprivation of reason. Lord Coke divided it into four parts, or, as he called them, "Manners."

First. The idiot or fool.

Second. He who, of good and sound memory at birth, lost it by visitation of God.

Third. Lunatics who have lucid intervals, and sometimes of good sound memory, and sometimes *non compos mentis*.

Fourth. By his own act as a drunkard.

So that drunkenness at and by Common Law under certain circumstances was a form or species of insanity. By the same Common Law it was held:

First. That the drunkard was responsible for all his acts criminally, even if the state of drunkenness was such as to make him insensible to his surroundings and unconscious of his acts.

Second. That drunkenness, instead of being any defense to a charge of crime committed while in a state of intoxication, was not only no defense, but that it aggravated the act.

These doctrines were upheld by the English Courts in *Dammaree's case*, 15 St. Tr., 592; *Frost case*, 22 St. Tr.,

*Read before the Medico-Legal Society, October 19, 1892.

472; *Rex v. Carroll*, 7 c. and p., 115; and these doctrines have been held likewise in nearly all the American States.

In Ala., *State v. Bullock*, 13 Ala., 413; in Cal., *People v. King*, 27 Cal., 507; in Conn., *State v. Johnson*, 40 Conn., 106; in Del., *State v. M'Gonigal*, 5 Har., 510; in Ga., *State v. Jones*, 20 Ga., 534; and in nearly every American State similar decisions have been made.

The Common Law which would not uphold a deed, will, or contract, made by a drunken man in an unconscious state of intoxication, would hold the same man criminally liable for every act constituting a violation of the criminal law. To-day we are regarding these views as legal curios and relics of the past.

The law should have its museums for the preservation of its antique anomalies. A silent, unconscious change has been wrought in the law, not by legislation, but by the growth of ideas, the diffusion of knowledge.

Insanity is now demonstrated to be a disease of the brain, of which it is itself an outward manifestation. Inebriety is also shown to be a disease of the man, manifesting itself through brain indications, which demonstrate it to be a form of insanity, wholly dominating the volition and beyond the powers of the victim to control, and is now treated as such.

The essential element of crime, intention, hardly fits into the acts of the unconscious inebriate, who, while blind or dead drunk, kills an innocent victim, and the absence of motive, like the absence of intention, are missing links in that chain which the law exacts in regard to all criminal action. It would be next to impossible now to find a judge willing to charge a jury that a crime committed by a man in a state of intoxication, in which the accused was unconscious of his act, or incapable of either reflection or memory, should be placed on a par with one fully comprehended and understood by the perpetrator.

Buswell says, in speaking of the old doctrine of drunkenness being an aggravation of the offense: "It is apprehended that this is the expression of an ethical rather than a legal truth."—(Buswell on Insanity.)

Such considerations compel us to inquire: What is law? There are two schools of thought regarding it.

Webster, the great expounder of the American Constitution, is credited with saying: "Law is any principle successfully maintained in a Court of Justice." This represents one school.

Richard Hooker, in his ecclesiastical polity, represents the other. He says of Law: "There can be no less acknowledged than that her seat is the bosom of God, her voice the harmony of the world; all things in heaven and earth do her homage; the very least as feeling her care, the greatest as not exempted from her power." The gulf intervening between these two extremes is as wide and deep as that which divided Abraham and Lazarus in the parable of our Lord.

The framers of the New York Penal Code, without the courage to hew down the error of the old doctrine, engrafted thereon a provision that enables a jury now, in that State, to pass on the motive and the intention of the unconscious and wholly insensible inebriate, so that by law now in New York, since the Penal Code of that State, a conviction would, in such a case, be well nigh impossible.

How have the English Judges met the question? In 1886 Mr. Justice Day, in *Regina v. Baines*, at the Lancaster assizes, charged a Lancaster jury, that if a man was in such a state of intoxication that he did not know the nature of his act, or that it was wrongful, he was insane in the eye of the law; and that it was perfectly immaterial whether the mental derangement resulting from such intoxication was permanent or temporary.

In 1887 Chief Baron Palles held that if a person, from

any cause, say, long watching, want of sleep, or deprivation of blood, was reduced to such a condition that a smaller quantity of stimulants would make him drunk, and that would produce such a state if he were in health, then neither law nor common sense could hold him responsible for his acts, inasmuch as they were not voluntary, but produced by disease.

As long ago as 1865, in the case of Watson, tried at Liverpool for the murder of his wife before Baron Bramwell, the evidence showed that he was laboring under delirium tremens. After the act, he grew calm and said he knew perfectly well what he had done, and that his wife was in league with men who were hidden in the walls.

Baron Bramwell, who favored hanging insane men who committed homicides, when acting under an insane delusion, if of sufficient intelligence to understand the nature and quality of the act and its consequences, tried the case, and charged the jury that there were two kinds of insanity, by reason of which a prisoner was entitled to be acquitted. Probably the jury would not be of opinion that the prisoner did not know the quality of his act, that it would kill and was wrong, but it was still open to them to acquit him, if they were of opinion that he was suffering from a delusion leading him to suppose that which, if true, would have justified him in the act. One more remark he would make, viz: That drunkenness was no excuse, and that a prisoner can not, by drinking, qualify himself for the perpetration of crime; but if, through drink, his mind had become substantially impaired, a ground of acquittal would then fairly arise. The prisoner was acquitted.

Under the English law there is no right of appeal to the convicted homicide, as in the American States, and so it is difficult to find the decision of English higher courts on the questions involved in the discussion.

In the American States no person is executed except on the decision of the highest court of the State, if the accused desires it and appeals. In England the appeal does not lie as a matter of right, and so the opinion and dicta of the English trial Judges form the real body of the law of England upon these questions.

Baron Bramwell undoubtedly regarded Watson as entitled to an acquittal, and the case shows a remarkable result in this respect. Had he been insane and committed the homicide under delusions which dominated his will and controlled his action, he would have been convicted if he had sufficient intelligence to understand the nature and the quality of the act, but the drunkenness which had caused the attack which resulted in delirium tremens, with a diseased condition of the brain, also resulted in a delusion which controlled his mental powers so as to render him irresponsible at law.

In 1838 Baron Pollock held that the law was the same where insane predisposition and not physical weakness was the proximate cause of the intoxication.

The English Home Secretary, Mr. Matthews, is one of the ablest men connected with the English government.

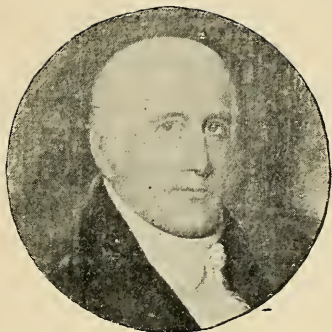
Under the English system he has the power to commute or modify the sentence of the courts in criminal cases, and he exercises it with as much effect, and more in many cases, than would the reversal of the Appellate Court, if the right of appeal existed.

No eye in Great Britain sees more clearly or more intelligently the action of the criminal courts than his. It is his province to correct errors and redress grievances and abuses, if such exist or occur, in the criminal jurisprudence of Great Britain. He has recently named a commission, composed of Mr. J. S. Wharton, Chairman; Sir Guyer Hunter, M. P.; Mr. E. Leigh Penburton, Assistant Under Secretary of the

Home Department; Mr. Daniel Nickolson, Superintendent of the Broad Moor Criminal Lunatic Asylum, and Mr. C. S. Murdock, head of the Criminal Department, to inquire into the best mode of treatment and punishment for habitual drunkards.

Mr. Matthews says, regarding the appointment of this committee, "Great differences of opinion have arisen as to what kind and degree of punishment for offences committed by habitual drunkards would be the most effectual, both as a deterrent and with a view to the reformation of such offenders. It appears to me that advantage would result from an inquiry being made into the subject." It may be fairly claimed, so far as the British Islands are concerned, that the old common law rule no longer is enforced there, and that inebriety, as a disease, is now not only recognized as an existing fact, but that the jurisprudence of that country is receiving such modifications as are necessary to fit it for the advance made by scientific research.

We are doubtless near similar results in the American States.



CHIEF JUSTICES DELAWARE COURT OF COMMON PLEAS.

JAMES BOOTH, SR.
1799—1828.

RICHARD BASSETT.
1793—1799

THOMAS CLAYTON.
1828—1832.

DYING DECLARATIONS.*

BY CLARK BELL, ESQ.

Dying declarations may be defined as statements of material facts concerning the cause and circumstances of homicide, made by the victim under the solemn belief of impending death, the effect of which on the mind is regarded as equivalent to the sanctity of an oath.

They are substitutes for sworn testimony, and must be such narrative statements as a witness might give on the stand, if living.

3 Russell on Crimes (9th Am. Ed.), 250; Wharton Criminal Evidence (9th Ed.), § 276; Roscoe Crim. Ev. (10th Ed.), 34; Greenleaf on Evidence (14th Ed.), § 158.

1. Dying declarations are admissible only in cases of homicide, where the death of the deceased is the subject of the charge, and the circumstances of the death are the subject of such declarations.

Reynolds v. State, 68 Ala., 502; Hill v. State, 41 Ga., 484; Montgomery v. State, 80 Ind., 281; Wright v. State, 41 Texas, 246; Hackett v. People, 54 Bar. (N. Y.), 370; Hudson v. State, 3 Coldw. (Tenn.), 355; 3 Russell on Crimes (5th Ed.), 354.

2. The declarations must be made not merely *in articulo mortis*, but under the sense of impending death, without expectation or hope of recovery.

Reynolds v. State, 68 Ala., 502; People v. Hodgson, 55 Cal., 72; State v. Darrand, 5 Oregon, 216; Dunn v. State, 2 Ark., 229; Hay v. State, 40 Maryland, 633; State v. Blackburn, 80 N. C., 474; 1 Greenleaf on Evidence (14th Ed.), 158; Tracy v. People, 97 Ill., 101; People v. Gray, 61 Cal., 164.

3. Dying declarations are admissible, even though others may not have thought the person making them would die.

*Read before the Medico-Legal Society, December session, 1892.

People v. Simpson, 48 Mich., 474; R. v. Mosly, 1 Mood. C. C., 97; R. v. Peel, 2 F. & F., 21.

But not if the victim has any hope of recovery, however slight.

3 Russell on Crimes (9th Am. Ed.), 252.

Hope of recovery afterwards abandoned makes the dying declarations admissible.

Swall v. Com. of Pa., 91 Pa. State, 304; Yong v. Com. (Ky.), 6 Bush, 317; State v. McEvoy, 9 S. C., 208; Mockabee v. Com., 75 Ky., 380; R. v. State, 12 Cox C. C., 103; State v. Kilgore, 70 Mo., 546; R. v. Hubbard, 14 Cox, C. C., 505.

It is not essential, however, that the consciousness of impending death should be expressed by the dying man himself; it may be collected from the circumstances of the case, the nature of the wounds, or from expressions used by the victim.

Com. v. Murray, 2 Ark., 41; Com. v. Williams, Ib. 69; State v. Gallick, 7 Clark (Iowa), 287; State v. Nash, Ib. 347; People v. Lee, 17 Cal., 76; People v. Ybarra, Ib. 166; Kilpatrick v. Commonwealth, 7 Casey, 198.

The dying declarations may be made by signs, by writing, or in any other manner of communication.

Com. v. Casey, 11 Cush., 417; Jones v. State, 71 Ind., 66; R. v. Reddingfield, 14 Cox, C. C., 341.

It is not necessary that the examination of the deceased should be conducted after any formal manner.

It is no objection that the declarations were obtained by pressing and earnest solicitation, or in answer to leading questions.

The jury pass upon the effect of the statements and their real value.

1 Russ. on Crimes (5th Ed.), 360; Com. v. Casey, 11 Cushing, 417; R. v. Osman, 15 Cox, C. C., 1; R. v. Woodcock, 2 Leach, 561; State v. Wilson, 24 Kansas, 189.

5. It does not matter if considerable time elapses after the declarations were made, if they were uttered under a sense of impending death, and without hope of recovery.

3 Russ. on Crimes (5th Ed.), 355; 1 Phillips's Ev. (10th Ed.), 245; 3

Russ. on Crimes (5th Ed.), 556; Roscoe's Crim. Ev. (10th Ed.), 57; R. v. Bernadotti, 11 Cox, C. C., 316.

6. Dying declarations must be confined strictly to the act of killing, and to the facts and circumstances relating to and attending it, which form a part of the *res gestæ*.

They are inadmissible in relation to former or other transactions, not relating to the killing, or disconnected with the death of the victim.

Reynolds v. State, 68 Ala., 502; Urol v. State, 20 Ohio St., 460; West v. State, 7 Texas Appeals, 150; State v. Wood, 53 Vt., 560; State v. Draper, 65 Mo., 335.

The true test of the relevancy of the declaration is, as to whether the deceased could have testified to them as a witness in the cause, if living.

They must be statements of actual facts, and not be mere expressing of opinions, or matters of belief.

Shaw v. People, 3 Hun (N. Y.), 272; State v. Williamson, 67 N. C., 12; Reynolds v. State, 68 Ala., 502; McPherson v. State, 22 Ga., 478; People v. Wasson, 66 Cal., 538; People v. Taylor, 59 Cal., 640.

7. Before dying declarations are received in evidence, it should be shown that they were actually made in expectation of impending death, and without hope of recovery. This may be shown by the nature of the injury, by what the injured person said, or what the physicians and attendants said in his hearing, the state of his mind, and the facts surrounding the act.

It is not essential that the injured person should have stated that the declarations were made in expectation of death, or that any one in his presence should have stated that his death was impending or must follow.

People v. Simpson, 48 Mich., 474; Ward v. State, 78 Ala., 441; State v. Patterson, 48 Vt., 308.

8. The question of the admissibility of the declarations is a judicial one, and is to be determined by the Court from all the circumstances of the case.

The province of the Court is to pass upon the admissibility

of the declarations. Their weight and effect is to be determined by the jury alone.

Campbell v. State, 38 Ark., 509; Walker v. State, 37 Texas, 366; People v. Maine, 16 N. Y., 113.

9. Dying declarations may be given in evidence as well in favor of the prisoner on the trial as against him.

Moon v. State, 11 Ala., 764; R. v. Scaife, 1 M. & Rob., 551; 3 Russ. on Crimes (5 Ed.), 361, *n*.

10. Where a child is of intelligent mind, and fully comprehends the nature and effect of an oath, his declarations, made under a belief of impending death, are admissible.

R. v. Pike, 3 C. & P., 598; R. v. Perkins, 2 Moo. C. & C., 135; 9 C. & P., 395; Wharton Cr. Ev. (9th Ed.), § 290.

11. The deceased must be shown to have been in such a state of mind, at the time the declarations were made or signed, as to have had a full and clear understanding of the document he signed or of the declaration made.

Winfield v. State, 15 Neb., 484; Mitchell v. State, 71 Ga., 128; McHugh v. State, 31 Ala., 317.

12. The general rule of evidence applies to all cases alike, whether the defense be insanity, self-defense, or an *alibi* as to dying declarations.

They are regarded by the law as secondary evidence, and will be received and treated by the judges as such.

Boyle v. State, 105 Ind., 469; S. C. 55 Am. Rep., 218; State v. Vansent, 80 Mo., 67; Lambert v. State, 23 Miss., 322; People v. Knapp, 1 Edm. Select Cases (N. Y.), 177.

13. If the deceased would be incompetent as a witness, if living, for any cause, his declarations could not be received.

a. If convicted of an infamous crime.

b. If an insane person.

c. If incompetent for any reason.

1 Greenleaf on Ev. (14th Ed.), § 157; Nesbit v. State, 43 Ga., 238; Walker v. State, 39 Ark., 220.

As to insanity.

Bolin v. State, 9 Lea (Tenn.) 516; Donnelly v. State, 2 Putch. (N. J.), 463; State v. Ah Lee, 8 Oregon, 314.

MALPRACTICE.*

BY CLARK BELL, ESQ.

The law upon this subject may be stated briefly as follows:—

Malpraxis may be defined as bad or unskillful practice in a physician or surgeon, whereby the health of the patient is injured.

Negligent Malpractice embraces those cases where there is no criminal intent or purpose, but gross negligence in bestowing that attention which the situation of the patient requires.

Ignorant Malpractice is the administration of medicines, or the treatment of the disease, fracture, or injury in a way calculated to do injury which actually does harm, and which a properly educated, skilled, and scientific medical man or surgeon would know was not proper in the case:

Elwell's *Malpractice*, 198 and 243; 2 *Bouv. L. Dict.*, 149.

Physicians and surgeons, by holding themselves out to the world as such, engage that they possess the reasonable and ordinary qualifications of their profession, and are bound to exercise reasonable and ordinary care, skill, and diligence, but that is the extent of their liability. The burden of proof is upon the plaintiff in actions for malpractice to show that there was a want of due care, skill, and diligence, and that the injury was the result of such want of care, skill, and diligence:

Holtzman v. Hey, 19 Ill. App., 459; *Baird v. Morford*, 29 Iowa, 531; *Vanhoover v. Berghoff*, 90 Mo., 487; *Craig v. Chambers*, 17 Ohio St., 253; *State v. Housekeeper*, 70 Md., 162, and *Leighen v. Sargent*, 31 N. H., 119; also as to last proposition, *Getchel v. Hill*, 21 Minn. 464.

*Read before the Medico-Legal Society, March 8, 1893.

The reasonable and ordinary care, skill, and diligence which the law requires of physicians and surgeons are such as those in the same general line of practice, in the same general locality, ordinarily have and exercise in like cases:

Hathorn *v.* Richmond, 48 Vt., 557; Wilmot *v.* Howard, 39 Vt., 447; Utley *v.* Burns, 70 Ill., 162; Ritchie *v.* West, 23 Ill., 385; Almond *v.* Nugent, 34 Iowa, 300; Tefft *v.* Wilcox, 6 Kan. 46; Small *v.* Howard, 128 Mass., 131; Patten *v.* Wiggin, 51 Me., 594, and similar decisions in Missouri, New Hampshire, Oregon, and Texas.

A different rule has been held in Pennsylvania. In McCandless *v.* McWha, 22 Pa. St., 261, the court held that such skill was required "*as thoroughly educated surgeons ordinarily employ*," and a similar view was taken in Haire *v.* Reese, 7 Phila. (Pa.) 138, but the weight of authority is as first above stated.

The locality in which the physician or surgeon practices should be taken into account. One in a small town or sparsely-settled country district is not expected to exercise the care and skill of him who resides and has the opportunities afforded in a large city. He is bound to exercise the average degree of skill possessed by the profession generally in the locality in which he resides and practices:

Gramm *v.* Boener, 56 Ind., 497; Kelsey *v.* Hay, 84 Ind., 189; Small *v.* Howard, 128 Mass., 131; Gates *v.* Fleischer, 67 Wis., 504; Smothers *v.* Hauks, 34 Iowa, 286; Haire *v.* Reese, 7 Phila. (Pa.), 138; Nelson *v.* Harrington, 72 Wis., 591.

Physicians and surgeons should, however, keep up with the latest advance in medical science, and use the latest and most improved methods and appliances, having regard to the general practice of the profession in the locality where they practice, and it is a question for the jury to decide from all the circumstances of the case whether the physician or surgeon has done his duty in that respect: VanHooser *v.* Berghoff, 90 Mo., 487.

If a physician or surgeon departs from generally-approved methods of practice, and the patient suffers an injury

thereby, the medical practitioner will be held liable, no matter how honest his intentions or expectations were of benefit to the patient:

Carpenter v. Blake, 60 Barb. (N. Y.), 488; 50 N. Y., 606; 10 Hun (N. Y.), 358; 75 N. Y., 12; *Lampher v. Phipor*, 8 C. & P., 475; *Sean v. Prentice*, 8 East, 348; *Slaler v. Baker*, 2 Wils., 359.

Physicians and surgeons are bound to give their patients their best judgment, but they are not liable for mere error of judgment:

Tefft v. Wilcox, 6 Kan., 46; *Patten v. Wigen*, 51 Me., 594; *Carpenter v. Blake*, 60 Barb. (N. Y.), 488; 10 Hun (N. Y.), 358; *Wells v. World Disp. M. Ass.*, 45 Hun, 588; and see also *Fisher v. Nichols*, 2 Ill. App., 484.

If the error of judgment is so great as to be incompatible with reasonable care, skill, and diligence, the physician or surgeon would be liable:

West v. Martin, 31 Mo., 375; *Howard v. Grover*, 28 Me., 97.

If the patient in any way contributes to the injury by his fault or neglect he cannot recover for malpractice by the physician or surgeon:

Haire v. Reese, 7 Phil. (Pa.), 138; *McCandles v. McWha*, 22 Pa. St., 261; *Reler v. Hewing*, 115 Pa. St., 599; *Polter v. Warner*, 91 Pa. St., 362; *Am. Rep.*, 668; *Lower v. Franks*, 115 Ind., 334; *Chamberlain v. Porter*, 9 Minn., 260; *West v. Martin*, 376.

And this doctrine holds where the physical weakness of the patient or his natural temperament is the contributory cause of the injury:

Haire v. Reese, 7 Phila. (Pa.), 138; *Simond v. Henry*, 39 Me., 155; *Bogle v. Winslow*, 5 Phila. (Pa.) 136.

Damages may be recovered for pain and suffering produced by the negligence or want of skill of the physician or surgeon, and also for loss of time and expense incurred on account of the improper treatment:

Tefft v. Wilcox, 6 Kan., 46; *Wenger v. Calder*, 78 Ill., 275; *Chamberlain v. Porter*, 9 Minn., 260; *Stone v. Evans*, 32 Minn., 243.

PRIVILEGED COMMUNICATIONS.*

BY CLARK BELL, ESQ.

This subject has recently excited public interest, and the state of the law of England being different from the existing law in many of the American States, I have thought that medical men and jurists on both sides the Atlantic would feel an interest in a statement of the law as it exists, with brief reference to the authorities, for use of both professions.

There is a wide divergence of opinion between the views of English common law jurists and the legal and medical profession in many States of the American Union upon this subject.

The statute of the State of New York provides as follows :

No person duly authorized to practice physic and surgery shall be allowed to disclose any information which he may have acquired in attending any patient in a professional character, and which information was necessary to enable him to prescribe for such patient as a physician or to do any act for him as a surgeon. (2 Rev. Statutes 406, part 3, chap. 7, title 3, sec. 73.)

By section 834 of the Code of Civil Procedure of the State of New York it is enacted as follows :

A person duly authorized to practice physic or surgery shall not be allowed to disclose any information which he acquired in attending a patient in a professional capacity, and which was necessary to enable him to act in that capacity.

The Code of Civil Procedure of New York provides as follows :

Section 833 : "A clergyman or other minister of any religion shall not be allowed to disclose a confession made to him in his professional character, in the course of discipline enjoined by the rules or practice of the religious body to which he belongs." This provision may be also found in the Revised Statutes of New York, at 2 R. S., 406, part 3, ch. 7, tit. 3, sec. 72.

*Read before the Medico-Legal Society, March 8, 1893.

Section 835 : "An attorney or counsellor-at-law shall not be allowed to disclose a communication made by his client to him, or his advice given thereon, in the course of his professional employment."

Section 836 : "The last three sections (833, 834, and 835) apply to every examination of a person as a witness, unless the provisions thereof are expressly waived by the person confessing, the patient, or the client."

Section 836 was amended by an enactment of the Legislature of the State of New York in 1891, chap. 381, by adding to it the following language :

But a physician or a surgeon may, upon a trial or examination, disclose any information as to the mental or physical condition of a patient who is deceased which he acquired in attending such patient professionally, except confidential communications and such facts as would tend to disgrace the memory of the patient, when the provisions of section 834 have been expressly waived on such a trial or examination by the personal representatives of the deceased patient, or if the validity of the last will and testament of such deceased patient is in question, by the executor or executors named in said will.

The following amendment was passed by the New York Legislature in 1892 :

Section 1. Section eight hundred and thirty-six of the Code of Civil Procedure is hereby amended so as to read as follows :

§ 836. The last three sections apply to any examination of a person as a witness unless the provisions thereof are expressly waived upon the trial or examination by the person confessing, the patient, or the client. But a physician or surgeon may, upon a trial or examination, disclose any information as to the mental or physical condition of a patient, who is deceased, which he acquired in attending such patient professionally, except confidential communications and such facts as would tend to disgrace the memory of the patient, when the provisions of section eight hundred and thirty-four have been expressly waived on such trial or examination by the personal representatives of the deceased patient, or if the validity of the last will and testament of such deceased is in question, by the executor or executors named in said will, or the surviving husband, widow, or any heir-at-law or any of the next of kin of such deceased, or any other party in interest. But nothing herein contained shall be construed to disqualify an attorney on the probate of a will heretofore executed or offered for probate or hereafter to be executed or offered for probate, from becoming a witness as to its preparation and execution in case such attorney is one of the subscribing witnesses thereto.

Session Laws, N. Y., 1892, chap. 514, p. 111.

The following American States and Territories have, by legislative enactment, adopted substantially the provisions contained in the Revised Statutes of New York : Arizona

Territory, Arkansas, California, Idaho, Indiana, Iowa, Kansas, Missouri, Montana, Nebraska, Nevada, New York, Ohio, Oregon, Utah Territory, Washington, Wisconsin, Wyoming.

The States and Territories which have not legislated upon the subject are: Alabama, Colorado, Connecticut, Delaware, Florida, Georgia, Maine, Massachusetts, Mississippi, Minnesota, North Carolina, New Hampshire, New Jersey, New Mexico Territory, Pennsylvania, Rhode Island, South Carolina, Tennessee, Texas, Vermont, Virginia, West Virginia.

The fundamental principle of law which should control the question may be stated, and should be considered, as follows :

Privileged communications may be defined to relate to that class of evidence which, on grounds of public policy, courts decline to receive for the reason that its admission would entail greater mischief than its rejection, because of some collateral evil to third persons or to society in general.

The following examples illustrate the reason of the rule ; Secrets of State; communications between a government and its officials; the secrets of the jury-room; judicial consultations; sources of information on which criminal prosecutions are based; communications of client to counsel; patient to physician, penitent to priest, and between husband and wife.

The discrimination against physicians in respect to confidential disclosures under the common law rule seems to be contrary to the principle of law above stated, and the legislation in New York and other States extending the privilege to physicians and surgeons has been in response to a universal public sentiment that public policy and the best interests of society would be promoted and subserved by in-

terdicting disclosures by physicians, which, from the nature of their intimate relation to and knowledge of the family secrets of their patients, they must necessarily acquire as well from observation as from disclosure. The language of the statutes is more in the interest of the patient, of the family relation, and of society, than of the physician.

“He shall not be allowed to disclose,” is the language of the statutes.

The physician who has taken the usual oath of Hippocrates has sworn to keep such secrets inviolate, and that physician in an American State, where the privilege has not been extended by statute, who should disclose the secrets of his patient would encounter public odium and social ostracism, so universal is the public sentiment against any disclosures by a physician or surgeon of the professional secrets of his patients. By the common law of England the privilege which was extended to lawyers was not extended to physicians, and by no English statute has the privilege been extended to physicians.

Dutchess of Kingston Case, 20 How S. T. Pr., 613. *Baker vs. R. R.*, 3 C. P., 91. *Mahoney vs. Ins. Co. L. R.*, 6 C. P., 252. *Wheeler vs. Le Marchant*, 44 S. T. N. S., 631. 2 Starkie on Evidence, 228.

It will thus be seen that it was not a prohibition of the privilege to physicians, but the common law privilege had never been extended to them, nor to clergymen in England, by subsequent legislation.

The sentiment of English physicians, where the common law rule is enforced, is doubtless correctly stated by the eminent writer, Prof. C. Meymott Tidy, in his work on Legal Medicine :

The highest legal authorities in England have decided that medical men enjoy no special privilege with regard to secrets of a professional nature. In other words, no practitioner can claim exemption from answering a question because the answer may or would involve a violation of secrecy, or even implicate the character of his patient. This is the law, and however it may be defended upon legal grounds, we hope there are not a few

medical men who would prefer to sacrifice their personal liberty to their honor. It seems a monstrous thing to require that secrets affecting the honor of families, and, perhaps, confided to the medical adviser in a moment of weakness, should be dragged into the garish light of a law court, there to be discussed and made joke of by rude tongues and unsympathetic hearts. (1 Tidy's Legal Medicine, 20; Phila. ed.)

Prof. R. J. Kinkead, Lecturer on Medical Jurisprudence in Queen's College, Galway, speaks the sentiment of Irish medical men in saying:

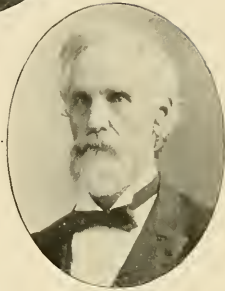
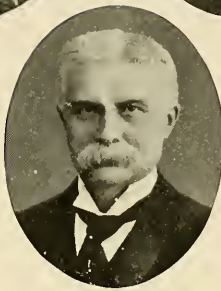
In Great Britain and Ireland the medical practitioner is compelled to answer any question, although it may involve the violation of a solemn obligation to secrecy, and the betrayal of a trust confided to him in one of the most sacred relationships that can exist between men.

Many men, it is to be hoped, would prefer to sacrifice their liberty rather than their honor and that of their profession. (Guide to Irish Medical Practitioner, by Prof. Kinkead, p. 426.)

By the Roman law, the privilege is extended to physicians. (Weiske, Rechts, Lexicon XV., 259, ff.)

By the Penal Code of France it is made a crime for a physician to disclose the secrets of his patient. (Bonière Traité des Preuves, sec. 179.)

For an able exposition of the law upon the subject, see paper by Mr. Albert Bach, "*Medico-Legal Aspect of Privileged Communications.*" (Medico-Legal Journal, June, 1892, vol. X., p. 32.)



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RAILWAY SURGERY IN LAW AND MEDICINE.*

BY CLARK BELL, ESQ., OF THE NEW YORK BAR.

When we speak of American railways we embrace *all* in the Western Hemisphere. Those of North America exceed in mileage those of all the other nations of the civilized world.

The Dominion of Canada had completed and in operation 14,000 miles of railways in 1891. In the same year the United States had 214,000 miles, including double tracks and sidings. The ratio of increase in mileage, in the near future, of new lines now contemplated or in process of construction, will probably be as great in proportion for the American Union as is its present preponderance over all other countries combined.

Every railway should have its surgeon. He is a necessity as much as its lawyer, its president, or even its superintendent. Both professions of law and medicine are now a necessity for the proper management and conduct of a railway.

The railway surgeon came, perhaps, last, but he has come to stay, and no railway of importance can now dispense with this officer.

The great importance to the railways themselves of a capable surgeon has more recently come into universal recognition, and the general public, for whose convenience, use, and welfare railways are constructed and operated, has an

*Read before the National Association of Railway Surgeons at Omaha, Neb., June 7th, 1893.

enormous stake in the capacity, the integrity, and the ability of the railway surgeon.

Whatever may be said or thought of the practice of medicine, as a profession, all concede that surgery is a science—an exact science—and that railway surgery should and must keep pace with that marvellous advance made in surgical science during the past quarter of a century.

In the nature of things and from the necessities of the situation, it is not enough that a railway surgeon should be abreast with the advance of surgical science. He should, I had almost said he must, be educated in those branches of the law which impinge upon his duties and the exact relations of the railway to those who suffer injuries and come under his hands.

The capable railway surgeon of to-day should be a medico-legal jurist in a more complete and much larger sense than has been ever considered before. He should familiarize himself with the principles of law bearing upon all questions of liability and responsibility on the part of the railway company for injuries in all classes of damage cases; and ignorance or want of intelligent appreciation of the facts in such cases, are frequently of substantial damage and injury to his company.

The same necessity, in a like degree, attaches to the completely equipped railway lawyer. It is not enough that he thoroughly understands the law applicable to a given case; he is a thousand fold better qualified for its trial if he has mastered the surgical questions involved; and it often becomes the most important duty of the railway surgeon to carefully and patiently instruct counsel in the surgical minutiae of a case without which, the latter would be almost incompetent to try the action, no matter how able or well grounded he was in the law of the case.

To-day the railway counsel in damage cases for personal

injuries should be also a medico-legal jurist, in the best sense, and while the surgeon will regard the issues from surgical standpoints, and the counsel from legal, it is by the intelligent combination of these two professions that the elucidation of the questions at issue are safer in such hands, both for the railways and the public.

For example, can anything be more important to the railway surgeon than to know precisely what the rule of law is regarding the settlement of claims for damages, on behalf of the railway, with persons injured, and just what his duties are in that regard.

Lord Chief Justice Coleridge said from the English bench only last February, in the case of *Smith vs. South Eastern R. W. Co.*, referring to the action of a railway surgeon, who had been acting for his company in endeavoring to compromise a claim with the injured man, to whom he had submitted various offers for settlement:

“Anything more improper than what was done by the company’s medical officer—I mean making offers of various sums to the plaintiff—I never heard. I thought all the great railway companies had given up the practice. Medical men huckstering with the parties injured as to the amount of damages;”

and he refused an application for a new trial when £850 had been awarded, mainly on the ground of the misconduct of the medical officers.

There may be railway surgeons who do not know how the law looks upon such transactions, and there may be railway officials who do not suppose that they prejudice their causes before the courts by consenting to or instructing their surgeons to make an effort to compromise their accident cases.

Again. It is important a railway surgeon knows exactly what his legal rights as a witness are, when upon the stand giving evidence in a damage case. The value of his own evidence and the rights of his principals may turn on his sustaining himself as a witness and properly resisting and

resenting improper and illegal encroachments of counsel upon the legal rights of a witness.

Again. Take the recent exciting trial of Dr. Buchanan, in the city of New York, and consider the great advantage which the defendant's counsel in that case had, by reason of the extraordinary knowledge they had obtained upon the especial subject of inquiry; by reason of the education they had acquired upon the medico-legal points involved, and the especial training of Mr. O'Sullivan in that class of cases, who aided the veteran and skilled counsel for the defense, Mr. Brooks.

This special knowledge, so useful, so essential, so necessary to each profession—to the lawyer as well as the surgeon—cannot, as a rule, be obtained in the schools of either medicine or law, as now administered.

It is not taught there, with a few praiseworthy exceptions, and the ablest men of both professions, confronted by the exigencies constantly arising in railway practice, have been compelled to learn what has thus far been acquired, often in the bitter school of experience, and sometimes at a high cost to railway or sufferer.

My purpose is to induce you to examine how these questions can best be met. How can the railway surgeon best fit himself for his duties, and how can railway counsel best qualify themselves for the emergencies constantly arising, requiring superior and technical knowledge and skill?

The National Association of Railway Surgeons exists to-day because of this crying want. It is your *raison d'être*. Your work, carefully analyzed, is an effort on the part of the individual surgeon, spurred on by the necessities, by his environment, to seek additional knowledge by inquiry of and contact with his fellows.

This is a step in the right direction, and justifies a wonder; that it has not earlier found that recognition which the

great interest aroused by the labors of this body has excited in the railway world. It has been and will be fruitful of good, but it does not go as far as the intelligent surgeon desires; and, indeed, must advance. It has stimulated and quickened the expansion and extension of surgical inquiry, knowledge, and research; but the surgeon needs also the same careful education in legal knowledge to qualify him that the lawyer does in the surgical knowledge, so important to the proper discharge of his duty. It is the contact of the two professions, of the lawyer and the surgeon, upon the same general lines of study, to which I deem it an honor and my duty to urge your thoughtful attention, in the hope that it will also reach the brighter minds of my own profession.

It was to meet a similar position, in relation to the professions of law and medicine, that the Medico-Legal Society was founded more than twenty years ago, and to which, since I assumed the chair of that Society, in 1874, I have given some of the best years and most careful studies of my life. That society, originally local and confined to the city of New York, has long since become national and even international in its autonomy and work.

It has vice-presidents and active members in nearly every state and territory of the American Union not only, but in many foreign countries, and students of forensic medicine in all the great capitals and the chief cities of the world, are upon its active, its corresponding, and its honorary lists.

Its initiation fee, \$5, and its annual dues, only \$3, (outside of the State of New York,) entitling each member to the MEDICO-LEGAL JOURNAL free, paid for by the Society; and the Society and its JOURNAL, now just completing its 10th volume, have advanced the study of forensic medicine in a most conspicuous and successful way throughout the world of medical jurisprudence.

That JOURNAL has recently opened a Department of Rail-

way Surgery, which will receive the aid of some of the more prominent railway surgeons of the country, and to which, also, eminent railway lawyers will contribute editorially, and this department of its columns will be devoted to the study of those issues and questions, so full of interest to both lawyers and surgeons in railway cases.

I venture to make the following recommendations, which I hope, also, will interest railway counsel as well :

1st. That a Section upon Railway Surgery be formed in that Society, under a general chairmanship, to be annually chosen, with a board of vice-chairmen, composed of lawyers and railway surgeons, selected from various sections of the country.

2. That the admission fee of the Section be fixed at a nominal price, say \$2; and the annual subscription or dues be fixed at \$2, entitling each member to the MEDICO-LEGAL JOURNAL, free; that the Section be devoted under the joint management of able men of both professions, to the study of the subjects we are considering, "The advancement of Railway Surgery," in its best and broadest sense, and that contributions from both professions be solicited and utilized in its columns.

I would suggest that a joint committee of conference be named by this body, to meet a like committee of the Medico-Legal Society, with power to agree upon a plan and basis of organization, and upon the *personnel* of the officers for the first year—to consist of a chairman and 10 or more vice-chairman from each profession—who would take an interest in the subject, and that the members of your body and of the Medico-Legal Society be urged to unite with the Section, and help to advance its work, and in all ways increase its usefulness.

If even 100 men from each profession would thus unite in a section work of this kind, and the medical and legal press

aided the endeavor, it would be the most notable, forward, and upward step in railway surgery of our century, and would certainly be conducive of great good toward the advancement of forensic medicine, in the interesting and very important department of railway surgery.

The Medico-Legal Society has on its roll of members some notable names among railway surgeons, among whom I mention, without intending to be invidious: Dr. G. P. Conn, of New Hampshire; Dr. Nicholas Senn, of Wisconsin; Dr. Eads, of Texas; Dr. R. Nunn, of Georgia; Dr. Matthew D. Field, of New York City, among surgeons; among railway Jurists, Judge John F. Dillon, of New York; Chief Justice John C. Allen, of New Brunswick; Chief Justice Horton, of Kansas; Judge L. E. Emery, of Maine; ex-Chief Justice Strahan, of Oregon; Judge A. A. L. Palmer, of New Brunswick; Judges McClellan and Coleman, of the Supreme Court of Alabama, besides its President, Judge Abram H. Dailey, of Brooklyn and its ex-President and now 1st Vice-President, ex-Judge Henderson M. Somerville, late of the Supreme Bench of Alabama.

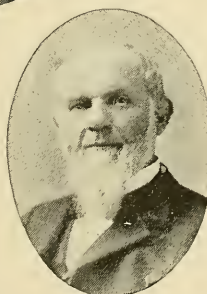
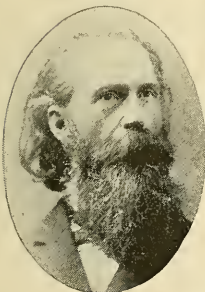
While acting on my own responsibility, and without time for consultation among my associates in the Medico-Legal Society, I feel safe in saying that the proposed movement is so in the line of sympathy with the work of that body in the past, in similar directions, that I will guarantee its hearty co-operation in such a movement, if it meets the approval of the National Association of Railway Surgeons.

EXPERT AND OPINION EVIDENCE.

BY CLARK BELL, ESQ., OF THE NEW YORK BAR.

There has been so much confusion and conflict in expert testimony; so much discussion and difference of opinion as to the true province of the medical expert, especially in homicidal cases, and the subject has become so involved in the minds of medico-legal jurists, that I have felt that a carefully prepared and reliable statement of the present state of the law in America and in England would be of value to both professions of law and medicine.

The completely equipped medico-legal jurist, whether a lawyer or a medical man, should be advised of the state of the law, upon the particular specialty upon which he is to be examined, concerning which he is to give testimony, and I have prepared with care the presentation of the law as it now exists, with a very full reference to the authorities upon each branch examined, for the use of lawyers, medical men, and medico-legal jurists generally, who are called as experts or to give expert opinions or medical evidence, and to enable them to clearly understand and reliably, ascertain, the real issues in such cases and the admissibility and bearing of expert testimony upon them. In editing the American edition of *Taylor's Medical Jurisprudence* last year, I gave to both professions upon this and similar medico-legal questions, the authorities in our country and in England upon which the law stands, and I draw upon my labors in this branch of that work for much of the present paper :



PORTRAITS OF EMINENT ALIENISTS AND MEDICAL MEN.

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Indiana.

DR. W. W. HESTER,
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CORONER M. J. B. MESSEMER,
New York.

I.

EXPERTS.

An expert is one who has made the subject upon which he gives his opinion a matter of particular study, practice, or observation, and he must have a particular and special knowledge upon the subject concerning which he testifies :

Page v. Parker, 40 N. H., 59; Jones v. Tucker, 41 N. H., 134; Heald v. Thing, 45 Me., 392; Mobile Life Ins. Co. v. Walker, 58 Ala., 290; Slater v. Wilcox, Barb. N. Y., 608; Dole v. Johnson, 50 N. H., 454; Hyde v. Woolfolk, 1 Iowa, 159; State v. Phair, 48 Vt., 366; Nelson v. Sun Mutual Ins. Co., 71 N. Y., 453-460; Vander Denck v. Helluson, 8 M. G. & S., 812; Bird v. State, 21 Gratt. (Va.), 800; Dickinson v. Fitchburgh, 13 Gray (Mass.), 546, 553; Nelson v. Johnson, 18 Ind., 334; Estate of Toomes, 54 Cal., 514; Travis v. Brown, 43 Pa. St., 12; Buffum v. Harris, 5 R. I., 250.

II.

EXPERT EVIDENCE.

1. Expert evidence is that testimony given by one, expert and specially skilled, in the subject to which it relates, or is applicable; concerning information beyond the range of ordinary observation.

2. The general rule of law is that witnesses must testify to facts and not to opinions :

Clark v. Fisher, 1 Paige (N. Y.), 171; s. o. Am. Dec., 402; Neilson v. Chicago, etc., R. Co., 59 Wis., 516; Watson v. Milwaukee, etc., R. Co., 57 Wis., 332; McNeil v. Davidson, 37 Ind., 336; Pindar v. Kings Co. Fire Ins. Co., 36 N. Y., 648; Bass Furnace Co. v. Glasscock, 82 Ala., 452; Heath v. Slocum, 115 Pa. St., 549; Amer. and Eng. Enc. of Law, vol. 7, p. 495 (note 1).

a. The witness must only state facts and not draw conclusions or inferences from facts :

Luning v. State, 2 Pin. (Wis.), 215; s. o. Chand. (Wis.), 178; s. o. 2 Pin. (Wis.), 285; s. o. 1 Chand. (Wis.), 264; Abbott v. People, 86 N. Y., 460; People v. Murphy, 101 N. Y., 126; Sloan v. N. Y. Cen. R. Co., 45 N. Y., 125; Campbell v. State, 10 Tex. Ct. of Appeals, 560.

b. It has been held that to allow witnesses to draw conclusions from facts or inferences is to usurp the province of the court or jury, and is illegal :

Booth v. Cleveland Rolling Mill Co., 74 N. Y., 15; s. o. 11 Hun, 278; Allen v. Stout, 51 N. Y., 668; Campbell v. State, 10 Texas App., 560; *In re Sale of Infant Land*, 6 C. C. Greene (N. J.), 92.

III.

EXCEPTIONS TO THE GENERAL RULE.

While these are the general rules of law, there are exceptions where the opinions of skilled experts may be taken as before stated (*supra*, 3 *a-b*).

a. In cases of necessity, where it is impossible to make the court and jury understand the matter in controversy without it.

b. To inform the court or jury as to physical laws or phenomena, which practice dates back to the old Roman law :

L. 8, section 1, xl.; L. 3, section 4, xi. 6. And this has been followed in France : 2 Beck's Med. Juris., 896. And in England in analogous cases : 9 Henry, 7, 16; 7 Henry, 6, 11; Buckley v. Rice, 1 Plow, 125.

c. To show the results of voluminous facts collated by a competent person who has examined and is shown to be competent to make the deductions :

Burton v. Driggs, 20 Wall. (U. S.), 125; Von Sachs v. Kretz, 72 N. Y., 548; s. o. 10 Hun (N. Y.), 95.

IV.

OPINION AND OPINION EVIDENCE.

Opinion evidence is the conclusions or opinions of witnesses concerning propositions based upon ascertained or supposed facts, by one who has had superior opportunities and greater knowledge than the ordinary person or witness, to judge of the subject-matter of the inquiry, and who, by reason of his especial knowledge of, and experience with the subject, is believed to be capable of arriving at a better and more reliable conclusion and judgment, from facts within his own knowledge, concerning the questions involved in the inquiry or controversy.

a. Any witness not an expert, who personally knows the facts, may give an opinion in a matter regarding skill, after having stated the facts on which he bases his opinion; or as

to matters with which he is especially acquainted, or has personal or peculiar knowledge, but which cannot be exactly or specifically described to the court or jury :

Indianapolis v. Huffer, 30 Ind., 235; *Doe v. Reagan*, 5 Blackf. (Ind.), 217; s. c. 33 Am. Dec., 466; *Wilkinson v. Moseley*, 30 Ala., 562; *S. & N. Ala. R. Co. v. McLeudon*, 63 Ala., 266; *Chic., etc., R. Co. v. George*, 19 Ill., 510; *Willis v. Quimby*, 11 Fost. (N. H.), 485; *Elliott v. VanBuren*, 33 Mich., 49; s. c. 20 Am. Rep., 668; *Culver v. Dwight*, 6 Gray (Mass.), 444; *Irish v. Smith*, 8 S. & R. Co. (Pa.), 573; *Cole v. State*, 75 Ind., 511; *Wharton's Evidence*, section 512; *Stephen's Evidence*, 103; *Porter v. Requonnoe, etc., Co.*, 17 Conn., 249; *Curtis v. Chic. R. R. Co.*, 18 Wis., 312; *Bennett v. Mehan*, 83 Ind., 566; *Ceru v. Doudican*, 114 Mass., 257; *State v. Folwell*, 14 Kan., 105; *Alexander v. Jonquill & Sterling*, 71 Ill., 366; *Blake v. People*, 73 N. Y., 586; *Bradley v. Salmon Falls Mfg. Co.*, 30 N. H., 487; *Ray v. State*, 50 Ala., 104; *Raisler v. Springer*, 38 Ala., 703; *Aulago Co. v. Davis*, 32 Ala., 703; *Pook v. State*, 62 Ala., 237; *State v. Babb*, 76 Mo., 501; *State v. Miller*, 53 Iowa, 84.

b. An expert physician may testify concerning the health of a certain person whom he knows personally, or has treated, and so may any witness not an expert, as to facts within his knowledge and observation, regarding the health or physical condition of another, or whether he was or had been apparently in good health :

Louisville, etc., R. Co. v. Wood, 12 N. E. Rep, 572; same Plff. v. *Falery*, 104 Ind., 409; *VanDeusen v. Newcomer*, 40 Mich., 120; *Tierney v. Minneapolis, etc., R. Co.*, 24 Amer. L. Reg., 660; *Higbie v. Guardian Mut. Life. Ins. Co.*, 53 N. Y., 603; *Smalley v. City of Appleton*, 35 N. W. Rep., 729; *Hanly v. Merrill*, 56 N. H., 227; *Cousin v. Sturtivant*, 117 Mass., 122; s. c. 19 Amer. Rep., 401; *Wilkinson v. Moseley*, 30 Ala., 562; *Barker v. Coleman*, 35 Ala., 231; *Carthage, etc., Co. v. —*, 102 Ind., 138; *Evans v. People*, 12 Mich., 27; *Irish v. Smith*, 8 S. & R. (Pa.), 573; *Elliott v. VanBuren*, 33 Mich., 49; s. c. 20 Amer. Rep., 668.

c. A physician or surgeon, shown to be competent, may give his opinion as to the probable effect of wounds and injuries, after he has viewed the body and examined the wounds, and as to whether the wounds or injuries would produce death :

Montgomery v. Scott, 34 Wis., 338; *Batten v. State*, 80 Ind., 394; *McDaniel v. State*, 76 Ala., 1; *Noblesville, etc., Gravel Road Co. v. Ganse*, 76 Ind., 142; *Davis v. State*, 38 Md., 15; *State v. Crenshaw*, 32 La. Ann., 406; *Armstrong v. Town of Ackley*, 71 Iowa, 76; *Rash v. State*, 61 Ala., 16; *Doolittle v. State*, 93 Ind., 272.

d. A non-expert cannot testify as to the effect of wounds or injuries.

e. Physicians shown to be qualified may testify and give opinions.

(1.) As to the cause of death of a person :

Boyle v. State, 61 Wis., 349; Egger v. People, 56 N. Y., 642; State v. Clark, 15 S. C., 403; Citizens' Gas Light Co. v. O'Brien, 118 Ill., 174; Sullivan v. Cowen, 93 Pa. St., 285; Boyd v. State, 14 Lea. (Tenn.), 161; Comin v. Piper, 120 Mass., 188; Eidt v. Cutler, 127 Mass., 523; State v. Cross, 68 Iowa, 180.

(2.) In malpractice cases, as to whether the treatment complained of was proper :

Quinn v. Higgins, 63 Wis., 664; Kay v. Thompson, 10 Am. L. Reg. (N. Brunsw.), 594; Boydston v. Gittner, 3 Oregon, 118; Williams v. Poppleton, 3 Oregon, 139; Wright v. Hardy, 22 Wis., 348; Mertz v. Detweiler, 8 W. & S. (Pa.), 376; Roberts v. Johnson, 58 N. Y., 613.

(3.) In cases of rape, after an inspection and examination of the parts as to health, physical condition; and from the condition, whether there had been an actual penetration, the capacity of the defendant to resist, and the effect the crime would produce upon the sexual organs :

State v. Smith, Phill. (N. C.), 302; State v. Knapp, 45 N. H., 148; Woodin v. People, 1 Park. Crim. Case (N. Y.), 464; Cook v. State, 24 N. J., 843. See also Com. v. Lynes, 142 Mass., 577 (in a case of alleged incest.)

(4.) As to whether an abortion had been performed or attempted :

State v. Smith, 32 Me., 370; State v. Wood, 53 N. H., 484; Regina v. Still, 30 U. C. (C. B.), 30; Com. v. Browne, 14 Gray (Mass.), 419.

(5.) As to the nature of a disease with which a person is or has been afflicted; its continuance; its severity and probable duration; the probability of its recurrence; its effect upon the general health; its cause; the remedy; its characteristics, whether hereditary; and as to the probable state of health of the person examined :

Napier v. Ferguson, 2 P. & B. (N. B.), 415; Jones v. White, 11 Humph. (Tenn.), 268; Flynt v. Bodenhamer, 80 N. Car., 205; Polk v. State, 36 Ark., 117; Hook v. Stovel, 26 Ga., 704; Cock v. Potter, 68 Pa. St., 342; Linton v. Hurley, 14 Gray (Mass.), 191; Cooper v. State, 23 Tex., 336.

Litch v. McDaniel, 13 Ired. (N. Car.), 485; Edington v. Ætna Life Ins. Co., 77 N. Y., 564; Eckles v. Bates, 26 Ala., 655.

Wiley v. Portsmouth, 35 N. H., 303.

Filer v. N. Y. Central R. Co., 49 N. Y., 42; Pidcock v. Porter, 68 Pa. St., 344; Anthony v. Smith, 4 Bosw. (N. Y.), 503; Flynt v. Bodenhamer, 80 N. C., 205.

Matteson v. N. Y., etc., R. Co., 62 Barb. (N. Y.), 364; Cooper v. State, 23 Texas, 336; Jones v. Tucker, 41 N. H., 546.

Welch v. Brooke, 10 Rich. (S. C.), 124; Lake v. People, 1 Parker's Crim. Cases, 495; Pitts v. State, 43 Miss., 472; U. S. v. McGlue, 1 Curtis (U. S.), 1; Napier v. Ferguson, 2 P. & B. (N. B.), 415.

Washington v. Cole, 66 Ala., 212; Janes v. White, 11 Humph. (Tenn.), 268.

Moore v. State, 17 Ohio, 521.

Morrissey v. Ingham, 111 Mass., 63.

Sanderson v. Nashua, 44 N. H., 492.

f. Experts in the use of the microscope, the micrometer, or familiar with the scientific chemical tests, may give opinions as to whether blood is human, or that of animals, birds, or amphibia :

Knoll v. State, 55 Wis., 249; s. o. 42 A. M. Rep., 704; Com. v. Sturtivant, 117 Mass., 122; State v. Knight, 43 Me., 1.

g. The confusion into which expert testimony, in this respect, has fallen in American courts is worthy of notice.

(1.) Certain experts affirm that they can discriminate between human blood and that of all the domestic animals, save a dog, and from all mammalian blood, except the opossum, the guinea-pig, the rabbit, the wolf, seal, beaver, monkey, and a few others, by the diameters of the red blood-corpuscles, under a microscope of very high powers.

Others deny this, and assert that while all mammalian blood can be distinguished from birds, fishes, and the amphibia, by the shape of the red corpuscles and their structure, that the extent to which the expert can go is to state that the blood is mammalian and is consistent with and similar to human or other mammalian blood :

R. U. Piper, in 15 Amer. Law Register, 561; 16 Amer. Law Register, 257; 19 Amer. Law Register, 529 and 593; 10 Central Law Journal, 183; 26 Amer. Law Register, 20; Thomas v. State, 67 Ga., 460; Recse, Text-Book Med. Jur., 2d Ed., 133; Wormley on Micrometry of Poisons, 735-6; 1 Tidy Legal Medicine, Phila. Ed., 231; Prof. Richardson, in London Lan-

cet, II., p. 210, 1875; I., pp. 321 and 700; Prof. M. D. Ewell, of Chicago, *Micrometric Study of the Red Blood-Corpuscles*, Amer. Practitioner, of Chicago, 1890, pp. 79 and 173; Prof. H. F. Formad, of Phila., *Studies of Mammalian Blood*, Journal of Compar. Med. and Surgery, July, 1888; Clark Bell, *Blood and Blood Stains*, Med.-Legal Journal, vol. 10, No. 2.

(2.) A non expert may testify that certain stains resembled blood. That is a fact that does not require skilled witnesses to see and recognize :

Thomas v. State, 67 Ga., 460; *McLain v. Com.*, 99 Pa. St., 86; *Dillard v. State*, 58 Miss., 368; *People v. Greenfield*, 30 N. Y. Sup. Ct., 462; s. c. 85 N. Y., 75; *People v. Gonzalez*, 35 N. Y., 49; *Rickerson v. State*, vol. 1, s. e., Rep. (Ga.), 178.

h. Competent experts, after a chemical analysis, may give an opinion as to the presence of poison in the internal organs of the body.

(1.) If a chemist or toxicologist, the witness need not be a physician or surgeon.

(2.) A physician, if shown to be competent, may also so testify, and as to the symptoms of any particular person, and as to whether death resulted from the effects of any poison :

State v. Bowman, 78 N. Car., 500; 1 *Crim. Law Mag.*, 294; *State v. Cook*, 17 Kan., 394; *State v. Terrell*, 12 Rich. (S. Car.), 321; *People v. Robinson*, 2 Park Crim. Cases (N. Y.), 236; *Polk v. State*, 36 Ark., 117; *Mitchell v. State*, 58 Ala., 448; *State v. Slagle*, 83 N. Car., 630; *Joe v. State*, 6 Fla., 591; *State v. Hinkle*, 6 Iowa, 380.

i. A chemist may give his opinions concerning scientific facts or knowledge, upon scientific or technical facts, which his superior and scientific learning enables him to understand and elucidate, and which are beyond the reach of persons not skilled or informed in chemical science. Examples :

(1.) Concerning the probability of the evaporation of spirits in certain casks :

Turner v. The Black Warrior, 1 McBlister (U. S.), 181.

(2.) Concerning the constituent parts of a mixture :

Allen v. Hunter, 6 McLean (U. S.), 303.

(3.) Concerning the safety of lamps :

Bierce v. Stocking, 11 Gray (Mass.), 174.

(4.) Concerning the nature of inks :

18 Am. Law Reg., 273; Goodyear v. Vosburgh, 63 Barb. (N. Y.), 154; Clark v. Bruce, 12 Hun (N. Y.), 271; Sheldon v. Warner, 45 Mich., 638; Ellingwood v. Bragg, 52 N. H., 448; People v. Brotherton, 47 Cal., 388.

(5.) Concerning noxious gases and their effect upon ground contiguous to a copper mill and the result of experiments therewith :

Lincoln v. Taunton M'fg Co., 9 Allen (Mass.), 182; Salvin v. North Brancepeth Coal Co., L. R. Ch. App. 705.

(6.) Concerning the analysis of dirt drained by a filter basin, as to the practical utility of the drainage :

Williams v. Taunton, 125 Mass. 34.

j. A competent farrier may testify as to whether a horse is sound or not, and a veterinary surgeon may give his opinion:

Pierson v. Hoag, 47 Barb. (N. Y.) 243; Pinney v. Cahill, 48 Mich. 584; Spear v. Richardson, 14 N. H. 428.

(1.) One not a farrier, if experienced with horses, is competent to say whether the eyes are good or bad, and give his opinion as to defects in the eyes :

House v. Frost, 4 Blackf. (Ind.) 293; Slater v. Wilcox, 57 Barb. (N. Y.) 604.

(2.) Any one familiar with horses is competent to state whether a horse seemed well or sick :

Spear v. Richardson, 34 N. H. 428; Willis v. Quimby, 11 Fost. (N. H.) 489.

(3.) A non-expert cannot give an opinion as to the appearance and symptoms of cattle alleged to be starved to death :

Stonan v. Waldo, 17 Mo. 489.

Nor as to certain appearances in horses alleged to have been overdriven or exposed :

Moulton v. Scruton, 39 Me., 288.

Nor as to whether a certain wound is likely to be fatal:

Harris v. Panama R. Co., 3 Bosw. (N. Y.) 7.

k. INSANITY.—1. The opinions of expert alienists and of medical men who are shown to be competent, from knowledge, study, or experience in such cases, are admissible as to the sanity or insanity of a person at a given time; and this evidence can be based upon their personal knowledge and information, or in answer to hypothetical questions based upon the testimony disclosed:

Conn. Mutual Life Ins. Co. v. Lathrop, 111 U. S. 612; *Dexter v. Hall*, 15 Wall. (U. S.) 9; *Fairchild v. Bastomb*, 35 Vt. 398-408; *Tulis v. Kidd*, 12 Ala. 648; *Grant v. Thompson*, 4 Conn. 203; s. c. 10 Am. Dec. 119; *Rawble v. Tryson*, 7 S. & R. (Pa.) 90; s. c. 10 Am. Dec. 444; *State v. Feltes*, 51 Iowa, 495; *Dejarnette v. Commonwealth*, 75 Va. 867; *U. S. v. Guiteau*, 3 Crim. Law Mag. 347; *State v. Baber*, 74 Mo. 292; *People v. Hall*, 48 Mich. 482; *People v. Schuyler*, 106 N. Y. 298; *Quaife v. Chicago, etc., R. Co.*, 48 Wis. 513; *In the matter of the Will of Blakely*, 48 Wis. 294; *Goodwin v. State*, 96 Ind. 550; *Coryell v. Stone*, 62 Ind. 307; *Davis v. State*, 35 Ind. 496; *Buswell on Insanity*, section 250; *Boardman v. Woodman*, 47 N. H. 120; *Commonwealth v. Rogers*, 7 Met. (Mass.) 500.

2. Non-professional witnesses who are not experts, who have known and been familiar with the person whose mental condition is in question, may state facts, conversations, and circumstances within their personal knowledge, and then give their opinions as to the sanity or insanity of the person:

Cram v. Cram, 33 Vt. 15; *Charter Oak Life Ins. v. Rodel*, 95 U. S. 232; *Hardy v. Merrill*, 56 N. Y. 227 (overruling the previous decision of the court upon the point); *Beaubien v. Cicatte*, 12 Mich. 459; *Grant v. Thompson*, 4 Conn. 203; *Clark v. The State*, 12 Ohio St. 483; *Clary v. Clary*, 2 Ired. (N. Car.) 78; *Baldwin v. State*, 12 Mo. 223; *State v. Erb*, 74 Mo. 199; *Walker v. Walker*, 14 Ga. 242; *Chace v. State*, 31 Ga. 424; *Wood v. The State*, 58 Miss. 741; *Webb v. State*, 5 Tex. App. 596 (overruling previous decisions in Texas); *Garrison v. Blanton*, 48 Tex. 299; *Norris v. State*, 16 Ala. 776; *Leach v. Prebster*, 39 Ind. 492; *Schlencker v. State*, 9 Neb. 241; *Kilgrove v. Cross*, 1 McCrary C. C. 144; *Pinney's Will*, 27 Minn. 280; *Conn. Mut. Life Ins. Co. v. Lathrop*, 111 U. S. 612; *O'Brien v. People*, 36 N. Y. 276; s. c. 48 Barb. (N. Y.) 274; s. c. 22 Amer. Rep. 441 (overruling); *State v. Pike*, 49 N. H. 399; s. c. 6 Am. Rep. 533; *Pidcock v. Potter*, 68 Pa. St. 342; s. c. 40 Am. Dec. 481; *Sutherland v. Hankins*, 56 Ind. 343; *Eggers v. Eggers*, 57 Ind. 461; *State v. Newlin*, 69 Ind. 108; *Doe v. Reagan*, 5 Blackf.

(Ind.) 217; s. c. Am. Dec. 466; State v. Hayden, 51 Vt. 296; Uptone v. People, 109 Ill. 169; Polin v. State, 14 Neb. 540; People v. Wreden, 59 Cal. 392; Coles v. State, 75 Ind. 511; Dejarnette v. Commonwealth, 75 Va. 867; Dunham's Appeal, 27 Conn. 193; Hathaway v. Ins. Co., 48 Vt. 335; Morse v. Crawford, 17 Vt. 499; Potts v. House, 6 Ga. 324; Vanauken's Case, 2 Stock. Ch. (N. J.) 190; Brooke v. Townshend, 7 Gill (Md.), 10; Dewitt v. Barley, 17 N. Y. 342; Hewlett v. Wood, 55 N. Y., 634; Clapp v. Fullerton, 34 N. Y. 190; Rutherford v. Morris, 77 Ill. 397; Duffield v. Morris, 2 Harr. (Del.) 375; Wilkinson v. Pearson, 23 Pa. St. 119; Dove v. State, 3 Heisk. (Tenn.) 348; Butler v. Ins. Co., 45 Iowa, 93; People v. Sanford, 43 Cal. 29; State v. Klinger, 46 Mo. 229; Holcombe v. State, 41 Tex. 125; McClaskley v. State, 5 Tex. App. 320; Norton v. Moore, 3 Head (Tenn.), 482; Powell v. State, 25 Ala. 28.

V.

(6.) EXCEPTIONS TO BOTH RULES.—(1) The subscribing witnesses to a will may always give their opinions as to the sanity or insanity of the testator at the time he signed the will in their presence, whether they are experts or not, and without reference to who they are. The reason of this lies in the fact that the law provides that the proof of the will must rest upon their evidence, and in the nature of things their evidence is competent upon all questions necessary to be established to prove the will. And this does not depend upon whether they state the facts or circumstances upon which their opinion is based or not:

Williams v. Lee, 47 Md. 321; VanHuss v. Rainbolt, 42 Tenn. 139; Hardy v. Merrill, 56 N. H. 227; Poole v. Richardson, 3 Mass. 330; Potts v. House, 6 Ga. 324; Dewitt v. Barley, 9 N. Y. 371; Grant v. Thompson, 4 Conn. 203; Wogan v. Small, 11 S. & R. (Pa.) 141; Robinson v. Adams, 62 Me. 369; Williams v. Lee, 47 Md. 321; VanHuss v. Rainbolt, 42 Tenn. 139; Buswell on Insanity, §§ 240, 265-266.

(2.) In some States the opinion of a non-expert witness as to the sanity or insanity of a person is not received, and has been excluded upon the ground that they are not proper exceptions to the general rule, which excludes the opinions of witnesses upon subjects concerning which they have no special or scientific knowledge.

Notably in Massachusetts, where the courts still adhere to this doctrine :

Hastings v. Rider, 99 Mass. 622; Townsend v. Pepperell, 99 Mass. 40; Phelps v. Hartwell, 1 Mass. 71; Poole v. Richardson, 3 Mass. 330; Needham v. Ide, 5 Pick. (Mass.) 510; Commonwealth v. Wilson, 1 Gray, 337; Commonwealth v. Fairbanks, 2 Allen (Mass.), 511; Buswell on Insanity, section 248; Amer. and Eng. Encyclo. of Law, vol. 7, p. 504; Cowles v. Merchants, 140 Mass. 377; May v. Bradley, 127 Mass. 414; Commonwealth v. Brayman, 136 Mass. 438; Baxter v. Abbott, 7 Gray (Mass.), 71.

Also in Maine :

Wyman v. Gould, 47 Maine, 159; Heald v. Thing, 45 Me. 392; Inhabitants of Fayette v. Inhabitants of Chesterville, 77 Me. 28; s. c. 52 Am. Rep. 741.

Also in Texas :

Gehrke v. State, 13 Texas, 508; Hickman v. State, 38 Texas, 191.

And in Iowa and Mississippi :

State v. Geddis, 42 Iowa, 268; Reed v. State, 62 Miss. 405.

In New York the early decisions were adverse to the admission of non-expert evidence :

Scars v. Shafer, 1 Barb. 408; Dewitt v. Barley, 9 N. Y., 371; Same v. Same, 17 N. Y. 340; People v. Lake, 12 N. Y. 358; Gardiner v. Gardiner, 34 N. Y. 155; Deshon v. Merchants' Bk., 8 Bosw. (N. Y.) 461; Clapp v. Fullerton, 34 N. Y. 190, 461; approved in O'Brien v. People, 36 N. Y. 276.

But the doctrine has since been settled in that State that non-experts may testify as stated in above subdivision, *a*, in accordance with what may be regarded as now the well-settled general rule:

Hewlett v. Wood, 55 N. Y. 634; Howell v. Taylor, 11 Hun (N. Y.), 214; Arnold's Will, 14 Hun (N. Y.), 525; Sisson v. Conger, 1 T. & C. (N. Y.) 564; Goodell v. Harrington, 3 T. & C. (N. Y.) 315; Real v. People, 55 Barb. (N. Y.) 576; s. c. 42 N. Y. 270.

(3.) Courts have held that a Roman Catholic priest, who is required by his priestly office to pass upon the sanity or mental state of those who receive the sacraments at his hands, is a qualified expert, and as such may answer a hypothetical question as to the sanity of any individual:

Estate of Toomes, 54 Cal. 509; s. c. 35 Am. Rep. 83; Amer. and Eng. Enc. of Law, vol. 7, p. 504.

VI.

(7.) WHO IS A COMPETENT EXPERT IN CASES OF INSANITY.—To entitle a person to give an opinion as an expert, the witness must be a person who is conversant with insanity, who has made the subject of mental diseases a special study, and, as stated in the rule defining what an expert is, he must be shown to have a particular and special scientific and technical knowledge upon the subject of insanity :

Reese, Med. Juris. & Tox. (1891), p. 19; Hastings v. Rider, 99 Mass. 622; Buswell on Insanity, sec. 248, and cases there cited; Commonwealth v. Rogers, 7 Met. (Mass.) 500; s. c. 4 Am. Dec. 458; Commonwealth v. Rich, 14 Gray (Mass.), 355; Clark v. Bruce, 12 Hun (N. Y.), 271; Kennedy v. People, 39 N. Y. 245.

a. An exception is made in case of the family physician, who is assumed to have superior knowledge and means of information more than ordinary persons, and who may give an opinion :

Hastings v. Rider, 99 Mass. 625; Dickinson v. Barber, 9 Mass. 225; s. c. 6 Am. Dec. 58; Hathorne v. King, 8 Mass. 371; s. c. 5 Am. Dec. 106.

VII.

(8.) As all persons can testify from their knowledge, based upon facts under their own observation, as shown in subdivision *a infra*, this embraces not only all physicians, but all experts, and leaves the question of opinion evidence by skilled experts narrowed to the true rule of opinion, testimony by skilled witnesses, and should be confined to hypothetical questions, a fact frequently lost sight of by courts and counsel.

a. Opinions of experts which usurp the functions or province of the jury are inadmissible, and should have little weight with courts or juries.

For example, the question of insanity is a question of fact to be shown by evidence. The question of whether the accused is responsible is a question of law. The opinions of a medical expert, who by his opinion passes on the question

of responsibility, usurps the functions of the jury, and such testimony lacks all the elements of evidence, and should have no weight :

Buswell on Insanity, sections 253 and 254; *Princep v. Dyce Sombre*, 10 Mo. P. C. 232; *Stackhouse v. Horton*, 2 McCart, 202; *Watson v. Anderson*, 13 Ala. 202; *McAllister v. State*, 17 Ala. 434; *Slais v. Slais*, 9 Mo. App. 96; *Francke v. His Wife*, 29 L. Arm. 302; *Parnell v. Commonwealth*, 86 Penn. St. 260; *Regina v. Richards*, 1 F. & F. 87; *Fairchild v. Bascombe*, 35 Vt. 398; *The Province of Medical Expertism*, by Judge Chas. G. Garrison, *Med. Legal Journal*, 1890, p. 486.

b. It has been held "that the opinions of medical experts upon the subject of insanity are to be received with peculiar caution, for the reason that while an expert in the exact sciences, or in mechanics, has tangible or ascertainable facts on which to base his opinions, those scientists who profess to understand the quality or emotions of the human mind, have in great part to rely upon mere conjectures for their inductions, which are often warped or fitted to pet theories or prejudices.

The trend of judicial thought in America and England is that the mere opinions of medical experts are of little or no value in enlightening courts or juries as to the facts of the cases which are to be determined :

People v. Lake, 12 N. Y. 358; *Buswell on Insanity*, section 253; *Doughty v. Doughty*, 3 Halst. Ch. 643; *People v. Finley*, 38 Mich. 482; *Regina v. Southey*, 4 F. & F. 864.

And in New York it has been held that where an expert witness has heard all the testimony and based his opinions upon it, he is not competent to give an opinion upon the general question of sanity or insanity, because his answer practically usurped the province of the jury, and that he should only be allowed to give an opinion as to what the facts proved or claimed to be proved indicated as to the mental condition of the party :

People v. Lake, 12 N. Y. 358; *People v. Thurston*, 2 Parker Cr. (N. Y.) 49; *Sanchez v. The People*, 22 N. Y. 147; *Arnold's Will*, 14 Hun (N. Y.), 525; *Hagadorn v. Conn. Mut. Life Ins. Co.*, 22 Hun (N. Y.), 249.

VIII.

(9.) The dicta of the court in *Conn. Mut. Life Ins. Co. v. Lathrop*, 111 U. S. 612, in explaining the reason of the now almost universal rule allowing any one, and especially non-experts, to give an opinion based upon facts within their own personal knowledge, correctly states the law and the reasons of its general adoption.

“Whether an individual is insane or not is not always best solved by abstruse metaphysical speculations expressed in the technical language of medical science. The common sense, and we may add the natural instincts, of mankind reject the supposition that only experts can approximate certainty upon such a subject.”

“The truth is, that the statement of a non-professional witness, as to the sanity or insanity at a particular time of an individual whose appearance, manner, habits, and conduct come under his personal observation, is not the expression of a mere opinion. In form it is opinion, because it expresses an inference or conclusion based upon observation of the appearance, manner, and motions of another person, of which a correct idea cannot well be communicated in words to others, without embodying more or less the impressions or judgment of the witness. But in a substantial sense, and for every purpose essential to a safe conclusion, the mental condition of an individual as sane or insane is a *fact*. Not, indeed, a fact established by direct and positive proof, because in most, if not all, cases, it is impossible to determine, with absolute certainty, the precise mental condition of another. Yet, being founded on actual observation, and being consistent with common experience and the ordinary manifestations of the condition of the mind, it is knowledge so far as the human intellect can acquire knowledge upon such subjects.”

a. As to the disposition, characteristics, or idiosyncrasies of a person, any witness who knows is competent to testify and need not be an expert.

(1.) As to whether he was fickle-minded :

Mills v. Winter, 94 Ind. 329.

(2.) Whether he was intoxicated :

City of Aurora v. Hillman, 90 Ill. 66; *State v. Huxford*, 47 Iowa, 16; *Stacy v. Portland Put. Co.*, 68 Me. 279; *Pierce v. State*, 53 Ga. 365; *State v. Pike*, 49 N. H. 407.

(3.) Whether he was angry at a certain time :

State v. Shelton, 64 Iowa, 333.

(4.) Peculiar affection for a third person, if known to the witness or observed by him :

McKee v. Nelson, 4 Cow. (N. Y.) 355; s. c. 15 Am. Dec. 384.

b. Masters of vessels or experienced seamen may give their opinions on questions pertaining to nautical science or affairs. For examples, vide:

Delaware & Co. v. Starrs, 69 Pa. St. 36; Baird v. Daily, 63 N. Y. 547; Western Ins. Co. v. Tobin, 32 Ohio, 77; Perkins v. Augusta Ins. Co., 10 Gray (Mass.), 312; Parsons v. Mig., etc., Ore Co., 16 Gray (Mass.), 463; Zugasti v. Lainer, 12 Moore P. C. 331; Reed v. Dick & Watts, (Pa.), 479; Jameson v. Drinkald, 12 Moore, 148; Fenwick v. Bell, 1 C. & K. 312; Carpenter v. Eastern Trans. Co., 71 N. Y. 574; Dolz v. Morris, 17 N. Y. Sup. Ct. 202; Steamboat Clipper Co. v. Logan, 18 Ohio, 375; N. E. Glass Co. v. Lovel, 7 Cushing (Mass.) 319; Eastern Trans. v. Hope, 95 U. S. 297; Walsh v. Walsh., etc., Ins. Co., 32 N. Y. 427; Guiterman v. Liverpool, etc., Ins. Co., 83 N. Y. 358; Ogden v. Parsons, 23 Howard (N. S.), 167; Lapham v. Atlas Ins. Co., 24 Pick. (Mass.) 1; Paddock v. Con. Ins. Co., 104 Mass. 521; Moore v. Westervelt, 7 Bosw. (N. Y.) 558; Price v. Powell, 3 N. Y. 322; Leitch v. Al. Mut. Ins. Co., 66 N. Y. 100.

c. Opinions may be given by persons skilled therein concerning the running and management of railway trains, and as to questions concerning railway construction, repairs, or management:

Bellefontaine, etc., R. Co. v. Bailey, 11 Ohio, 333; Seaver v. Boston, etc., R. Co., 14 Gray (Mass.), 466; Cinn., etc., R. Co. v. Smith, 22 Ohio, 227; Mobile, etc., R. Co. v. Blakely, 59 Ala., 471; Jeffersonville R. Co. v. Lanham, 27 Ind., 171; Hilton v. Mason, 92 Ind., 157; Fitts v. Creon City R. Co., 59 Wis., 323; Baldwin v. Chic., etc., R. Co., 18 Am. Law Reg., 761, and note; s. c. 50 Iowa, 680.

d. Generally an artisan, mechanic, or person skilled in any pursuit, avocation, or calling, may be examined as to matters relating to his avocation, concerning which he is shown to have peculiar and especial knowledge. Examples:

Sheldon v. Booth, 50 Iowa, 209; Scattergood v. Wood, 79 N. Y., 263; Burns v. Welch, 8 Yerg. (Tenn.), 117; Inpitz v. People, 34 Ill., 516; Union Pacific R. Co. v. Clopper, 102 (U. S.), 708; Woodruff v. Imperial Fire Ins. Co., 83 N. Y., 133; Ward v. Kilpatrick, 85 N. Y., 413; Campbell v. Russell, 139 Mass., 278; Terre Haute v. Hudnut, 18 Am. and Eng. Corp. Cas., 302; Folkes v. (hadd, 3 Doug. (Mich.), 157; Barnes v. Ingals, 39 Ala., 193; Davis v. Mason, 4 Peck, (Mass.), 156; Knox v. Clark, 123 Mass., 216; Brantly v. Swift, 24 Ala., 390; Phelps v. Terry, 3 Abb. Dec., (N. Y.), 607.

e. Competent experts, qualified by study and experience, may testify as to the identity or genuineness of handwriting:

Plunkett v. Bowman, 2 McCord, (S. Car.), 139; Morrison v. Porter, 35 Minn., 425; s. c. 59 Am. Rep., 331; Moore v. United States, 91 U. S., 270.

f. Foreign laws can be proved by an expert shown to be competent, if unwritten. If written, a certified copy is the best evidence:

Talbot v. Seeman, 1 Cranch, (U. S.), 1; Drake v. Glover, 30 Ala., 382; Shed v. Augustine, 14 Kansas, 282; Church v. Hubbard, 2 Cranch, (U. S.), 187; Dougherty v. Snyder, 15 S. & R., (Pa.), 84; Walker v. Forbes, 31 Ala., 9; Hoes v. Van Alstine, 20 Ill., 202; Barrows v. Downs, 9 R. I., 446, 453; Roberts's Will, 8 Paige, (N. Y.), 446.

IX.

(10.) Opinions of witnesses are never received if all the facts can be otherwise ascertained and made intelligible to the jury, or if the question is one that men in general can understand and comprehend:

Clark v. Fisher, 1 Paige, (N. Y.), 171; s. c. 19 Amer. Dec., 402; Stowe v. Bishop, 58 Vt., 498; Penn Co. v. Conlan, 101 Ill., 93; Passmore's Appeal, 27 N. W. Rep., 601; Hallahan v. N. Y., etc., R. Co., 102 N. Y., 104.

a. Concerning the ordinary affairs of life the jury can form intelligent opinions, and opinions of experts are inadmissible:

Bemis v. Centr. Vt. R. Co., 58 Vt., 636; Milwaukee, etc., R. Co. v. Kellogg, 94 U. S., 469; Schneider v. Barney, 113 U. S., 645; Durrell v. Bederly, 1 Holt, 285; Campbell v. Richards, 5 B. & Ad., 846; Carter v. Boehm, 3 Burr, 1905; Higgins v. Dewey, 107 Mass., 494; Neilson v. Chic., etc., R. Co., 59 Wis., 516; s. c. Watson v. Milwaukee, etc., R. Co., 57 Wis., 332; Gilbert v. Guild, 144 Mass., 361; Knole v. State, 55 Wis., 249; s. c. 42 Am. Rep., 704.

X.

(11.) The competency of an expert is a question for the court, and it must be clearly shown before his testimony can be received as an expert:

Stennett v. Pa. Ins. Co., 68 Iowa, 674; Russell v. Crittenden, 53 Conn., 564; Ft. Wayne v. Coombes, 107 Ind., 75; Higbee v. Guardian Ins. Co., 53 N. Y., 603; Russell v. Crittenden, 53 Conn., 564; Hinds v. Harbon, 58 Ind., 121; McEwen v. Bigelow, 40 Mich., 215; Dole v. Johnson, 50 N. H., 452; Castner v. Sliker, 33 N. J. L., 96; Flint v. Bodenheimer, 80 N. Car., 205; Perkins v. Stickney, 132 Mass., 217; Wright v. Williams's Estate, 47 Vt., 222.

XI.

(12.) **HYPOTHETICAL QUESTIONS.**—The rule is, that a party is entitled to put his case hypothetically, as he claims it to have been proved, and take the opinion of the witnesses thereon, leaving the jury to determine whether the question put covers the case as proved :

Bishop v. Spining, 38 Ind., 143; *Guetic v. State*, 66 Ind., 94; *Goodwin v. State*, 96 Ind., 550; *Cowley v. People*, 83 N. Y., 464; s. c. 38 Am. Rep., 464; *Quinn v. Higgins*, 63 Wis., 664; s. c. 53 Am. Rep., 305; *Page v. State*, 61 Ala., 16; *Boardman v. Woodman*, 47 N. H., 120; *Yardley v. Cutlibertson*, 108 Pa. St., 395; s. c. 56 Amer. Rep., 218; *Dexter v. Hall*, 15 Wall. (U. S.), 9; *Commonwealth v. Rogers*, 7 Met. (Mass.), 500; s. c. 41 Amer. Dec., 458; *Forsyth v. Doolittle*, 120 U. S., 73; *State v. Cross*, 68 Iowa, 180; *Morrill v. Tegarden*, 19 Neb., 534; *Ray v. Ray*, 98 N. Car., 566; *People v. Augsburgh*, 97 N. Y., 501.

a. The court should allow counsel great latitude in framing a question based upon the facts as claimed to be proved, if evidence tending to show the facts as claimed to be proved has been given ; but the court should not allow hypothetical questions based on alleged facts which have not been proved, or not within the range of legitimate evidence, or containing inferences or conclusions, or when they ask for conjectures ; nor those omitting material facts that are conclusively shown :

§ *Goodwin v. State*, 90 Ind., 550, disapproving *People v. Thurston*, 2d Park. Crim. Cases, (N. Y.), 49; *Strong v. Stevens Point*, 62 Wis., 255; *Haisle v. Payson*, 107 Ill., 365; *Cowley v. People*, 83 N. Y., 464, and cases there cited; *Higbie v. Guardian, etc., Co.*, 53 N. Y., 603; *State v. Stanley*, 34 Minn., 430.

XII.

(13.) It is the peculiar province of the jury to decide what weight, if any, they will give to the opinion of an expert. They are not bound by it, and may exercise their own experience upon the subject as to what weight it is entitled to receive.

The court has no power over it, and where judges have instructed juries to give greater weight to the evidence of pro-

fessional witnesses than to non-expert evidence, the verdicts have been set aside as illegal :

Congress, etc., Co. v. Edgar, 90 U. S., 645; Schwenger v. Raymond, 105 N. Y., 648; Guctig v. State, 64 Ind., 94; State v. Bailey, 4 La. Ann., 376; Von Valkenburgh v. Von Valkenburgh, 90 Ind., 433; Stone v. Chicago, etc., R. Co., 33 N. W. Rep., (Mich.), 24; Head v. Hargrave, 105 U. S., 45; Atchison, etc., v. Thul, 32 Kan., 255; Davis v. State, 35 Ind., 496; McGregor v. Armill, 2 Iowa, 30; Tolum v. Mohr, 21 Ark., 349; Chandler v. Barrett, 21 La. Ann., 58; Sanders v. State, 94 Ind., 147; People v. Montgomery, 13 Abb. Pr. (N. S.), (N. Y.), 207; Cunce v. Bessorné, 63 Ind., 524; State v. Cole, 63 Iowa, 695; Epps v. State, 102 Ind., 539; United States v. Molloy, 31 Fed. Rep., 19; Templeton v. People, 10 Hun, (N. Y.), 357; Eggers v. Eggers, 57 Ind., 461; Goodwin v. State, 96 Ind., 550; Humphries v. Johnson, 20 Ind., 190; Spenaley v. Lancashire Ins. Co., 62 Wis., 443,

XIII.

(14.) An expert witness cannot be compelled to give his opinion as an expert, unless he is compensated.

He cannot be punished for contempt in refusing to appear or testify as such without he is compensated, but he can be compelled to appear and testify to facts within his knowledge, the same as any other witness, without compensation above the statutory fee to which any witness is entitled :

Buchanan v. State, 59 Ind., 1; s. c. 26 Am. Rep., 75; 17 Alb. Law J., 242; Dillis v. State, 59 Ind., 15; Webb v. Page, 1 E. & K., 23; Parkinson v. Atkinson, 31 L. J., (N. S.), C. P., 199; *In re* Roelker Sprague, 276; People v. Montgomery, 13 Abb. Pr., (N. S.), 207; United States v. Howe, 12 Cent., L. J., 193.

The courts of Alabama and Texas have held that experts are not entitled to extra compensation :

Ex parte Dement, 53 Ala., 389; Sumner v. State, 5 Tex. App., 365.

But the weight of authority is otherwise. This subject has been exhaustively treated by Lawson in his work on Expert and Opinion Evidence, and by Rogers on Expert Evidence.

The medico-legal authors all treat it, but in a general way. Among them :

Wharton & Stillé, (1882); Dean, (1873); Elwell (1881), (1887); McClellan, (1872); Ordranax, (1869), (1878); Medico-Legal Papers, series 1, 2, and 3, (N. Y.); Taylor (all English and Phil. editions); Woodman & Tidy, (1876), (1884); Naquet's Legal Chemistry, (1876); Taylor on Poisons, (1875);

Field's Medico-Legal Guide, (1882); Reese, Med. Jur. & Tox., (1884), (1889), (1891); Bucknill & Tuke, (all editions).

The law authors on Evidence, (Wharton, Starkie, Greenleaf, Taylor, Best, Wood,) all treat the subject in their works on Evidence, to which the student and the expert should refer; vide also Prof. Washburn's paper in 1 Am. Law Review, 62.

[For references to authorities and decisions, the American and English Encyclopædia of Law and Abbott's New Digest are the best sources of information.]



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Alfred Hardy

SUGGESTION IN TREATMENT OF DISEASE.

BY CLARK BELL, ESQ.

I commend to medical men as well as laymen, lawyers, and jurists the views of Dr. Allan McLane Hamilton regarding mental suggestion, sometimes called hypnotic suggestion in the treatment of disease, in his thoughtful and courageous article in the *July Century*. Referring to the skepticism of medical men, Dr. Hamilton says:

"The influence of mind upon body is also nowadays being weighed more critically, and the liberalism of the age permits us to analyze and accept many phenomena which in the past were so wonderful and so far beyond explanation as to be relegated to the domain of quackery and charlatanism. To-day the curious and intensely interesting conditions following expectant attention, or the exercise of mental inhibition, are induced by a large number of physicians, who accomplish astonishing results, and a limited number even believe in the removal of organic disease by applicable mental therapeutic measures. The history of the widely varying examples, more or less accurately reported, of mental concentration with impaired consciousness and pliable will-power, subject to the suggestions and commands of an active agent, are too numerous and familiar to need special mention."

Alluding to miraculous and faith cures he says:

"The traditions of the Roman Catholic Church furnish many well-authenticated instances of the astonishing effect of the exercise of the mind on the body. The influence of faith as a curative factor, however, need not always be of a strictly religious nature. After all, the fundamental condition of expectant attention, and the natural awe of that which is mysterious or beyond the ken of the subject, is the ground-work of all cures, enabling the skilful physician to impress his patient by appeals to the imagination, and the money-making humbug to make diagnoses upon locks of hair furnished him by his credulous dupes or by dramatic operations.

"The emotional excitement so often connected with intense religious feeling is an element of the greatest importance in relation to suggestion, and many of the cures that are ascribed to prayer are, after all, only examples of what may be done by mental therapeutics. A familiar case is related by Bernheim,—that of the Princess Schwarzenberg, who had remained paralyzed for eight years despite the best medical skill. She was immediately cured, however, by a young peasant who made so strong an impression and inspired such hope that she discarded the apparatus that had been used to overcome the deformity of the limbs, and when suddenly appealed to, and told to rise and walk, she did, and was afterward entirely cured. It was probable in this case, as in others, that what is known as an "ideal paralysis" existed, which was cured by the sudden emotion attendant upon the development of her enthusiastic religious faith, and by the sudden suspension of inhibition."

He cites the marvelous cures of Newton :

"Many persons in this country are familiar with the faith-cure of Newton, who went about the country giving exhibitions forty or fifty years ago, and a large number of ideational invalids who passed in review before him were immediately restored to health by his exhortations and suggestions. Those with hysterical blindness recovered at once their vision, paralytics discarded their crutches, and a large proportion of patients whose sufferings were chiefly subjective were promptly relieved. In these cases, of course, suggestion was used. As a rule, with the spread of the news of such performances a delusional epidemic was established, and his labors became easier in consequence."

In alluding to the vulgar belief as to rings of tribolites, iron, or antimony in rheumatism and the influence of the magnet, Dr. Hamilton states as a fact :

"That the application of magnates to the surface of the body under ordinary circumstances could produce no effect whatever is patent to the common mind. An enterprising and venturesome young medical man of New York even went so far lately as to place his head between the armatures of one of the powerful magnates at the Edison shops without suffering the slightest embarrassment or manifesting any alteration in pulse. But, strange to say, when the magnets are applied to certain hysterical subjects, various alterations in sensibility occur, which are undoubtedly due to some influence of imagination. Exactly how this occurs it is impossible to say in the present stage of experimentation. That it is not magnetism which acts is made clear by the fact that if a gold or silver coin be laid upon the anesthetic skin of a hysterical woman, the sensation will be altered at the place of contact, or transferred."

In speaking of using subterfuge, fictitious operations and deception, with nervous cases, he says :

"Unquestionably, the use of deception for the purpose of combating various mental states is at times justifiable, and is especially familiar to persons who see much of the insane.

"I can recall a rather amusing experiment which attended the introduction of the phonograph, by which I was able, after many unsuccessful efforts, to correct the delusions of a religious lunatic and to make him eat. This man was an Irishman of a low order of intelligence, who had persistently refused food for several days, and who could not be persuaded to eat or drink until he was brought into a room where a phonograph was concealed. A carefully worded command suited to the case, which had been recorded upon the wax cylinder of the phonograph before his visit, was rolled forth in loud and oracular tones, he being unaware of its source. The effect was immediate, and for a time encouraging."

Speaking of hypnotic suggestion he says :

"What are the possibilities of this method of treatment it is difficult to state. That it ever cures organic disease I do not believe. But there are a variety of maladies, chiefly of a functional nature, but nevertheless exceedingly serious in their obstinacy, which may be removed by it when other remedies fail. Physicians generally are familiar not only with the

loss of vision which has been referred to, but with a loss of voice as well, which are simply hysterical conditions that may persist for years. It is also a well-known fact that there are motor disturbances, and what are known to all surgeons as neuromimoses, the most common forms of which counterfeit affections of the joints, and sometimes baffle the most thorough expert examination. These are the cases that have been cured by suggestion by quacks and others, who have, after all, really used a legitimate mode of treatment in a disreputable way. Though through ignorance they usually fail to apply proper remedies to grave organic conditions, they sometimes strike the mark in some one of these imitative diseases that have been mistakenly regarded as organic, making a coup which gains for them a magnitude of reputation, dwarfing their incompetence, and obscuring their failures in other directions.

"It is only within the past few years that scientific men have really adopted suggestion in a rational way, and the advances in psychology and psychopathology have paved the way for the use of a most potent agent. Our knowledge of disorders of motility and the disturbance of the governing coördinating faculties permits us to determine the pathology of certain convulsive and spasmodic conditions which until recently were simply looked upon as vague symptomatic states. Writers' cramp, which is a diseased automatism, has been repeatedly cured by suggestion made during the hypnotic state, some of which remained to control or antagonize the conditions in the intervals between the séances. I have seen forms of persistent tremor, chorea, speech defects, and other motor disturbances very much ameliorated, if not always cured, by the methods of Luys and Bernheim.

"In England and elsewhere suggestion has been used for the correction of certain mental states manifested in moral perversion, among which dipsomania and certain varieties of infantile viciousness figure; and my own experience has convinced me that in some insanities it is certainly a most valuable means for combating the development of delusions and in restoring the equilibrium of an unbalanced nervous system. A form of mental disorder which has been described by the French as *folie du doute*, and by the writer as introspective insanity, in which the person, whose intellectual health in most respects is unaffected, though he is tortured by doubts of the most aggravating and morbid kind, is decidedly relieved by the production of the hypnotic state, and the suggestion of certainty and assurance. Its efficacy in the cure of insomnia is undoubted, especially where the wakefulness is the result of more or less excitement."

In many minds the existence of the hypnotic trance is not conceded. Not a few physicians and many lawyers and judges deny it wholly. It is now too late for any man of scientific attainments to deny its existence.

Cases of fraud must of necessity occur occasionally in hypnotic developments. Fere and Binet say that the first duty of the operator is to be certain that he is not deceived in his subject.

Ernest Hart, who assailed the claims of Luys and of the Nancy School, recognizes the hypnotic trance. The authenticated experiments of Bernheim, Charcot, and the observers of the school at Saltpetriere, also Rich-

et, James, Fere, Janet, and others cannot be ignored because careless observers allow themselves to be deceived and misled and imposed upon by their subjects.

Dr. Hamilton speaks, not so much to convince others of the existence of the hypnotic condition, as to knowledge of it and its present known limitations. He thus alludes to that state:

"The use of suggestion implies the production of the hypnotic condition of varying depth, and where this is induced the individual is rendered passively receptive to mental impressions that may be made by the operator. This state, which is brought about in several ways, is characterized by an abstraction which varies decidedly in different persons, and is more easily induced by successive sances. Not only does the individual act upon suggestions made to him at the time, but it is sometimes possible to determine the nature of his actions in the waking stage by suggestions of which he is ignorant; and as a result of this it has been found possible to bring him more or less permanently under the dominance of a psychical influence. Therefore, if the desired result is a moral one, there is an agency at work which has been found practically to combat morbid impulses, and to antagonize neurotic cravings.

"Practically, there are two methods of inducing the hypnotic state, one of which primarily influences the organs of special sense, and the second the psychical or mental, although the production of the hypnotic condition is a strictly compound one, and the mental phenomena are those most dominant. Any agency that tends to the absorption and preoccupation of the individual favors the mental isolation, which, for the time being, makes the subject oblivious of his environment, and renders him the servant of another's will. Mechanical and other agencies which induce rhythmical exercise of special function are serviceable aids in putting the subject in a receptive condition."

As to methods of producing the hypnotic sleep, Dr. Hamilton enumerates the instrument used by Prof. Luys, with mirrors, revolving by clock work, and the methods employed by Braid of the bright ball or object, and thus describes an invention of his own:

"A year or more ago, believing that the same effect could be obtained by other means, I devised a pair of spectacles containing prisms with an extreme angle through which the subject looked at a bright light. In this way certain muscles of the eye-balls were brought into violent effort; and when expectant attention was stimulated by verbal suggestion, the patient very often became unconscious. So far as I know, no systematic attempts have been made until recently to appeal to the other senses; but bearing in mind the soothing effect of monotonous sounds, and of the steady dripping of water, which not only induces sleep in some wakeful people, but is often resorted to for a curious purpose by physicians and others, I devised an apparatus by which not only rhythmical impressions could be made upon the finger-tips, but repeated musical sounds were indefinitely evoked from a finely strung catgut by a revolving wheel. I found that it was much easier to produce the hypnotic sleep when the sev-

eral senses were acted upon at once than when one alone was appealed to.

"The popular method of passes or contact, which play so large a part in the operations of traveling quacks, and are familiar to most people, may be said to belong to the first order of procedure. The other method—that of Bernheim—implies the purely psychic mode of operation. This, under ordinary circumstances, is often exceedingly difficult, and unless the operator has the fullest confidence in himself, and is not too sensitive to the ridicule that may follow a failure, is more efficacious than the mechanical system.

"The mode of Bernheim and others is to place the subject in a chair, and by conversation to suggest the sleep that is to come. The person, whose embarrassment and fear are dispelled, is told, after his mental equilibrium is restored, to look at the operator and to think of nothing but sleep. He is told that his eyelids begin to feel heavy, that he cannot keep his eyes open, and next that they are closed. Sometimes it is very curious how quickly the person accepts the suggestion, and how readily sleep actually occurs. It is a matter of only a few minutes with a willing subject, and children particularly very often pass almost immediately into a hypnotic state, becoming slightly paler, and breathing regularly and deeply. When the hypnosis is profound, it is commonly associated with a certain muscular rigidity, and at times with a peculiar condition which in some respects resembles catalepsy. When pressure is made upon certain motor-nerve points,—of the forearm, for instance,—the hand will assume a new position as the result of muscular contraction, which often lasts for some time. While in this state suggestions of many kinds may be made, and the person's conduct is influenced thereby."

In regard to a very common opinion entertained everywhere, that the subject in the hypnotic state could be unconsciously induced to commit crimes and be unconsciously the instrument of the operation in wrongful acts, Dr. Hamilton denies this, and says:

"I am not inclined to accept the extreme views enunciated by those of my profession who have looked with alarm upon the irresponsibility which attends hypnotic suggestion, nor do I believe that a person whose normal condition is one of moral integrity can be made knowingly to commit crimes, except as the result of an abstract suggestion in which he is ignorant of the nature of the consequences of what he is about to do."

And cites the fact of experiments made upon this question as follows:

"About this time one of the most intelligent students of suggestion detailed an interesting series of experiments which went to prove that it was extremely difficult to produce absolute moral obliquity. Several women were selected for experiment, some of whom were respectable, and others whose life had destroyed every vestige of modesty. Although both classes of patients were apparently in the hypnotized state, it was found impossible to make the decent women disrobe when they were told to do so, while the others showed no reluctance in obeying the commands of the operator."

To the same effect is the testimony of the operator at the Eden Musee, M. Joubert, who stated to the writer that in an experience of seven years of almost constant practice he was unable to induce the hypnotized subject to do any act that would be in itself wrong. For example he could make the subject sing a song as "God Save the Queen," but he would be powerless to make her sing "God Save the Pig," or to do any act wrong in itself or contrary to her sense of propriety. That the state involved perfect confidence and trust between subject and operator, and that he did not think it possible for an operator to direct an immoral or immodest action by a female subject, and he insisted that the popular apprehension in that respect was not well founded. It is this belief that has led to the distrust of hypnotic experiments and their prohibition in some countries.

A much mooted question has been the proportion of people subject to hypnotic suggestion. Careful observers, like Fetterstrand, who failed in only ninety-seven cases in over three thousand, Dr. Henry Hulst, of this section, Fovel, and others claim that every sound person is susceptible to this condition.

Hamilton considers that a very great proportion of all sound people are hypnotizable, contrary to the generally received opinion. He recognizes, however, its value in hysterical and even in cases of light mental disturbances, but inclines to the view that the insane cannot be thus influenced and regards fixed insanity as beyond the reach of its use.

He concludes an admirable paper with a statement which would receive general endorsement from medical men upon the continent, and which we believe will shortly be more generally accredited here:

"To establish clearly the importance of adopting psychopathy as a means for the relief of disease, we must draw the line very sharply, and exclude the vast amount of dramatic nonsense which has found its way into the newspapers. The time has certainly come when this subject should be studied in a dignified and scientific manner, and honest physicians should separate it from every vestige of the claptrap and stage effect with which it has been invested for so many years.

"The therapeutic use of suggestion is in its infancy, but there can be no doubt that ultimately its importance will be recognized by every thinking person, and it will be adopted as an important and legitimate aid."



Gunning Bedford

EDITORIAL RESPONSIBILITY AND THE LAW OF LIBEL.*

BY CLARK BELL, ESQ., OF THE NEW YORK BAR.

It would require a treatise to write fully upon these topics, and I shall only give what may be regarded as the principles of law which govern such cases, with a reference to the authorities, to show what the existing law of the American States and of England now is regarding Libel and the involved question of Editorial Responsibility.

LIBERTY OF THE PRESS.

Every citizen has the right to publish with impunity the truth, with good motives, and for justifiable ends, any statement regarding an individual or a government.

But this right must not be exercised in publishing articles which are blasphemous, or scandalous, within the provisions of the Statutes of the State, province, or country where published, nor where, by reason of their falsity or malice, the standing, reputation, or pecuniary interests of individuals are injuriously affected.

People v. Creswell, 3 Johns Cases, (N. Y.), 392; Cooley Const. Lim. Ch. 12; 2 Kent's Commentaries, 12th ed., 17; Sweeney v. Baker, 13 W. Va., 182; Thatcher Crim. Cas., 39; DeLorme Const., 254; Root v. King, 1 Cow., (N. Y.), 628; Cin. Com. Gazette v. Timberlake, 10 Ohio St., 548.

This right exists in the American States under Article 1 of the Amendments of the Constitution of the United States, adopted March 4, 1789:

"Congress shall make no laws respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech or of the press; or the right of the people, peaceably, to assemble to petition the Government for a redress of grievances."

*Read before the National Association of Medical Editors.

This right is re-asserted in the State Constitution of the several American States.

In New York the language of the Constitution is as follows:

"SEC. 8. Every citizen may freely speak, write, and publish his sentiments on all subjects, being responsible for the abuse of that right; and no law shall be passed to restrain or abridge the liberty of speech or the freedom of the press. In all criminal prosecutions, or indictments for libel, the truth may be given in evidence to the jury; and if it shall appear to the jury that the matter charged as libellous is true, and was published with good motives and for justifiable ends, the party shall be acquitted; and the jury shall have the right to determine the law and the fact."

See also *Com. v. Blanding*, 3 Pick. (Mass.), 313.

Sir William Blackstone states the Common Laws of England upon the subject as follows:

"Every freeman has an undoubted right to lay what sentiments he pleases before the public; to forbid this is to destroy the freedom of the press; but if he published what is improper, mischievous, or illegal, he must take the consequences of his own temerity. To subject the press to the restrictive power of a licenser, as was formerly done, (to 1694), is to subject all freedom of sentiment to the prejudices of one man.

But to punish dangerous or offensive writings, which, when published, shall, on a fair and impartial trial, be adjudged of a pernicious tendency, is necessary for the preservation of the peace, and good order of Government and religion, the only solid foundation of civil liberty. Thus the will of the individual is left free, the abuse only of that free will is the punishment."

4 Blackstone Commentaries, 152.

Lord Mansfield held that the liberty of the press consisted "in printing without any previous license, subject to the consequences of the law."

Rex. v. Dean of St. Asaph., 3 T. R., 431.

This related to a time when a license was necessary to make publications at all.

Lord Ellenborough, in construing the common law after the abolition of the licenser, said:

"The law of England is a law of Liberty, and consequently with this liberty we have not what is called an *imprimatur*; there is no such preliminary license necessary; but if a man publish a paper he is exposed to the penal consequences, as he is to every other act, if it be illegal."

Rex. v. Cobbett, 29 Howell St. Tr., 49.

While the liberty of the press is full and complete, responsibility for its abuse is as clearly defined and as distinctly recognized.

Mr. Wirt said properly in the Peek impeachment case :

"The freedom of speech, liberty of the press, like all other human blessings, require the purifying and conservative principle of restraint, but criticism and ribaldry are not equivalent.

The language of the Court in page 403, 16 Arkan. St. Rep.:

"The liberty of the press is one thing and *licentious scandal* is another. The constitution guarantees to man the right to acquire and hold property by lawful means, but this furnishes no jurisdiction to a man to rob his neighbor of his lands or goods."

Hate v. Morrill, 16 Ark., 384.

Chief Justice McLean, in the Oswald case, (Penn.), said:

"The true liberty of the press is amply secured by permitting every man to publish his opinions, but it is due to the peace and dignity of society to enquire into the motives of such publication, and to distinguish between those which are meant for use and reformative, and which are solely for the public good, and those which are intended merely to delude and defame."

Chancellor Walworth said :

"It has been urged upon you that conductors of the public press are entitled to peculiar indulgences and have special rights and privileges.

"The law recognizes no such peculiar rights, but such as are common to them all. They have just the same rights that the rest of the community have, and no more. They have no right to publish falsehood, to the injury of others, with impunity."

King v. Root, 4 Wend., 113.

LIBEL.

A libel may be defined as "a malicious publication, expressed either in printing or writing, or by signs and pictures, tending to blacken the memory of the dead, or the reputation of one who is alive, and expose him to public hatred, contempt, or ridicule."

Dicta of Chief Justice Parsons in Com. v. Clap, 4 Mass.

Lord Holt said :

"Scandalous matter is not necessary to make a libel. It is enough if the defendant induces an ill opinion to be had of the plaintiff, or to make him contemptible or ridiculous."

Cropp v. Tilney, 3 Salk, 266.

Chief Justice Tindal :

"Any written communication which bears on the face or it, any charge, or which tends to villify another, is a libel."

Shipley v. Todhunter, 7 C. & P., 680.

Any publication (not oral) which exposes a person to hatred, contempt, ridicule, or obloquy, or tends to injure him in his trade or calling, impairs his standing in society, or causes him to be shunned or avoided by his neighbors, is a libel.

Odgers on Libel and Slander, 22 *Hetherington v. Sterry*, 28 Kan., 426; *Clark v. Binney*, 2 Pick., (Mass.), 115; *Bettner v. Holt*, 70 Cal., 270; *Bradley v. Cramer*, 59 Wis., 390; *Shattuck v. McArthur*, 29 Fed. Rep., 136; *White v. Nichols*, 3 How., (U. S.), 266.

Libel and slander may be discriminated thus:

If false and defamatory words are written and published, they constitute libel. If spoken, slander.

PROFESSIONAL MEN.—It is libellous to impute to any member of the learned profession that he does not possess the technical knowledge necessary for the proper practice of such profession, or to state that he has been guilty of professional misconduct.

Atkinson v. Detroit Free Press, 46 Mich., 341; *Riggs v. Devinston*, 3 *Johns Cas.*, (N. Y.), 108; *Henderson v. Com. Adv. Ass.*, 46 Hun., (N. Y.), 416; *Camp v. Martin*, 23 Conn., 86; *Fitch v. DeYoung*, 66 Cal., 339; *Gooderch v. Davis*, 11 Metc., (Mass.), 473; *Southce v. Denny*, 1 Exch., 196; 17 L. J., Ex., 157; *Day v. Butler*, 3 Wils., 59; *Poe v. Mondford*, Cro. Eliz., 620.

It is the right, and may be said to be the duty, of newspapers and journals to discuss measures relating to the health, morals, welfare, comfort and happiness of the people. But this confers no right to publish libellous matter. A journal stands in the same precise relation that an individual does.

Kegley v. Farrow, 60 M. D., 176; *Bronson v. Bruce*, 59 Mich., 467; *Campbell v. Spottswoode*, L. R., 8 L. T. N. S., 201.

The publisher of a newspaper is liable for everything appearing in its columns:

Buckley v. Knapp, 48 Mo., 152; *Rex v. Walter*, 3 Esp., 21; *Storey v. Wallace*, 11 Ill., 51; *Scripp v. Rilly*, 38 Mich., 10.

It makes no difference if he was ignorant of the fact of the publication, or even in case he forbade its appearance. He is responsible for what actually appears in the columns.

Story v. Wallace, 60 Ill., 57; *Andrews v. Wells*, 7 Johns, (N. Y.), 260; *Dunn v. Hall*, 1 Ind., 344; *Perrett v. Times*, 25 La. An., 170; *Com. v. Morgan*, 107 Mass., 199; *Curtis v. Massey*, 6 Gray, (Mass.), 260; *Detroit Post Co. v. McArthur*, 16 Mich., 447.

The publisher is liable even though he believed the article to be true, and acted in perfect good faith, if the publication is libellous.

Littlejohn v. Greeley, 13 Abb., (N. Y.?), p. 41; *Negley v. Farrow*, 60 M. D., 176.

The proprietor, the editor, the printer, and the publisher, are each and all liable, and may be sued separately or jointly.

Ludwig v. Cramer, 53 Wis., 193; *Rex v. Dover*, 6 How. St., Tr., 546.

It does not excuse the editor or proprietor, that the libel is signed by the author, and the writer need not be joined in the action for the libel.

Doyle v. Lyon, 10 Johns, 447; *Perritt v. N. O. Times*, 25 La. An., 170; *Ludwig v. Cramer*, 53 Wis., 193; *King v. Paine*, Mod., 163.

An editor is not bound to give up the name of an author of a libellous article.

If he refuses so to do, no blame can attach to him, and the injured party must be content to sue the proprietor, editor, printer, or publisher.

Harle v. Catherall, 14 S., Tr., 802.

In the case of *Colburn v. Patmore*, 1 Crompt. M. & R., 73, a proprietor who was mulcted in damages for a libel could not hold the editor liable for contribution, though the editor inserted and published it without the proprietor's knowledge and consent.

PRIVILEGED COMMUNICATIONS.

The following publications are privileged:

1. Fair and impartial reports of judicial proceedings, except with malice which must be proved, not inferred.

Thompson v. Powning, 15 Nev., 195, 202; Com. v. Blanding, 3 Pick., (Mass.), 304; Ackerman v. Jones, 5 L. & Sp., (N. Y.?), 42; Stanley v. Webb, 4 Sandf., N. Y., 21; Cin. &c., Co. v. Timberlake, 10 Ohio St., 548; Hawkins v. Globe P. Co., 10 Mo., App., 174; Ryalls v. Leader, 1 Ex. L. R., 298; Wason v. Walter, L. R., 4 Q. B., 82; Davison v. Duncan, 7 E. & B., 231; Saunders v. Baxter, 6 Heisk., (Tenn.), 69; Cooley's Const. Lim., 448; Townsend on S. and L., 221.

But an editor has not the right, while the trial is progressing, to assume that the accused is guilty, or to hold him out as such, nor to garble or misrepresent the evidence.

Usher v. Severance, 2 App., 9; Thomas v. Crowell, 7 John, (N. Y.), 264; Clark v. Binney, 2 Pick., (Mass.), 113, 117; Heyward v. Brown, 10 Bing., 579; Flint v. Pike, 4 Bam & Crissi, 473.

During the progress of the trial comment upon the administration of the law, the verdict of juries, the conduct of parties, or on the evidence of witnesses, is in violation of law, and a gross contempt of court. This is aggravated when the comment is suggested or inspired by a litigant or counsel.

Thomas v. Crosswell, 7 Johns, (N. Y.), 264; McBee v. Fulton, 46 Md., 403; Com. v. Blanding, 3 Pick., (Mass.), 304; Tresca v. Maddox, 11 La., An., 206; Cowley v. Pulsifier, 137 Mass., 392.

This rule ceases as soon as the trial is over. It may be inferred that the rule forbidding newspaper comment upon a trial in progress had been abrogated, from the fact that it is so constantly violated by the great metropolitan journals. Such is not the case.

This is never done in England, and its practice is in every way in direct violation of the law.

It would be the clear duty of any Judge, on a case made, to punish severely for contempt any newspaper violating this plain and fundamental principle of the law of libel.

When a trial is in progress from day to day, and the court has made no order forbidding the publication of the proceedings, the daily publication of the proceedings, in a fair and impartial manner, without comment or reflection, is privileged.

Lewis v. Levy, R. B. & E., 537.

2. Reports of proceedings before a Grand Jury are not privileged.

McCabe v. Cauldwell, 18 Abb., (N. Y.), Pr., 377.

3. A true report of the proceedings of a society, by a member or an officer, is privileged.

Barrons v. Bell, 7 Gray, (Mass.), 301.

4. Affairs of State, conduct of public officers, relation to foreign countries, reform in existing laws, public weal, are matters of public interest and are privileged.

Parmiter v. Coupland, 6 N. & W., 108; *Seymour v. Butterworth*, 3 F. & F., 372; *Henwod v. Harrison*, L. R., 7 C. P., 606; *Wasson v. Walter*, L. R., 4 Q. B., 93.

But this full freedom of speech and pen must not be abused.

Odgers L. & S., 25; *Dibdin v. Swan*, 1 Esp., 28; *Merivale v. Casson*, 202 B. D. 275; *Foster v. Scripps*, 39 Mich., 380; *Snyder v. Fulton*, 34 Md., 128; *Press Co. v. Stewart*, 119 Pa. St., 548.

5. All matters of public interest, legal, ecclesiastical, or political, are privileged. The action of every vestry, town council, public institution, are privileged, so long as they are of public concern and not private matters.

The general rule is that anything that is a matter of public concern to the inhabitants of a town or city is privileged.

Purcell v. Sowler, L. R. 2, C. P. div., 218; *Cox v. Ferny*, F. & F., 13; *Harle v. Catheral*, 14 L. T., 801; *Kelly v. Tingling*, L. R. 12 B., 699; *Booth v. Briscoe*, (C. A.), 22 B. D., 496; *Catherwod v. Mail*, 15 M. & W., 319; *Walker v. Brogden*, 19 C. B., Ns., 65.

BOOKS AND PUBLICATIONS.

6. Fair and honest criticism is privileged, but the private character of the author must not be attacked.

Fraser v. Berkeley, 7 C. & P., 621; *Strauss v. Francis*, (Io.), 4 F. & F., 939; *Carr v. Hood*, 1 Camp., 355; *Heriot v. Stewart*, 1 Esp., 437; *Stuart v. Lovell*, 2 Stark., 93; *Campbell v. Spottswode*, 3 F. & F., 421.

7. The same rule applies to pictures, works of art, theatrical performances, and public entertainments.

Thompson v. Shackell, Moo & Mae, 187; *Loane v. Knight*, Moo & Mae, 74; *Gott v. Pulsifier*, 122 Mass., 235; *Cooper v. Stone*, 24 Wend., (N. Y.), 434; *Greene v. Chapman*, 4 Bing., (N. Car.), 92; *Fry v. Bennett*, 28 N. Y.,

324; *Morrissy v. Belcher*, 3 F. & F., 614; *Duplary v. Davis*, 3 Tmes., L. R., 431; *Merrivale v. Carson*, 3 Times, L. R., 431; *Morrison v. Belcher*, 3 F. & F. C., 14.

8. A medical editor is justified in warning the public against advertised new modes of treatment, or best and only cures of diseases, and in exposing the absurdity of their professions, provided he does so fairly and with moderation, judgment, and without malice.

Odgers, L. S., 50; *Hunter v. Sharpe*, 4 F. & F., 983; *Morrison v. Harmer*, 3 Bing., (N. Car.), 759.

9. A man who appeals to the public through the press, either to expose, abuse, or to call attention to his grievances, cannot complain if he gets the worst of it, but the answers must be to the letter or the original statement, and cannot assail his character, or bring up new matter; it then ceases to be an answer; it becomes a charge, and if defamatory, is libellous.

Myers v. Kaichen, 42 N. W. Rep., (Mich.), 820; *Odgers L. & S.*, 57; *Odgers v. Mortmer*, 23 L. T., 472; *Koenig v. Ritchie*, 3 F. & F., 413; *R. v. Veley*, 4 F. & F., 1117; *O'Donoghue v. Hussey, jr.*, R., 5c. L., 124; *Duyer v. Esmond*, 2 L. R., (Jr.), 243; *Murphy v. Halpin, Jr.*, R. 8 C. L., 127; *Hubbs v. Wilkinson*, 1 F. & F., 608; *Hunter v. Sharpe*, 4 F. & F., 983; *Jenner v. A. Beckett*, L. R., 72 B., 11; *MacLeod v. Wakely*, 3 C. & P., 311.

FAIR CRITICISM DEFINED.

Fair and honest criticism in matters of public concern is privileged.

But what is fair criticism?

Mr. Odger, in his work on Libel and Slander, makes an excellent statement of legitimate criticism:

"True criticism differs from defamation in the following particulars:

1. Criticism deals only with such things as invite public attention or calls for public comment. It does not follow a public man into his private life or pry into his domestic concerns.

2. Criticism never attacks the individual, but only his work. Such work may be the policy of a government, the action of a member of parliament, a book published, or a picture exhibited. In every case the attack is on the man's acts, or on some *thing*, and not upon the man himself.

A true critic never indulges in personalities, but confines himself to the merits of the subject matter.

3. True criticism never imputes or insinuates dishonorable motives, (unless justice absolutely requires it, and then only on the clearest proofs.)

4. The critic never takes advantage of the occasion to gratify private malice, or to attain any other object beyond the fair discussion of matters of public interest and the judicious guidance of the public taste. He will carefully examine the production before him and then honestly and fearlessly state his true opinion of it."

This is an admirable statement of the present state of the law upon the question.

Lord Ellenborough, in the celebrated case of *Sir John Carr v. Howe*, 1 Camp., 355, n., said in defining fair criticism in publication :

"Every one has a right to publish true, fair, and candid criticism, even though the author may suffer loss from it. Such a loss the law does not consider as an injury, because it is a loss which the party ought to sustain. It is, in short, the loss of fame and profits to which he was never entitled. Reflection upon personal character is another thing. Show me an attack upon the moral character of the plaintiff, or any attack upon his character unconnected with his authorship, and I should be as ready as any judge who ever sat here to protect him. But I cannot hear of malice on account of turning his works into ridicule."

If this brief statement of the law regarding Libel, and the responsibility of editors, shall be of service to those who are in charge of journals as editors, I shall feel compensated for its preparation. I only regret that the pressure of other professional labors upon me at this time has prevented me from making the contribution more full than I have been able to do.

MEMORIAL OF SELECT COMMITTEE OF THE MEDICO-LEGAL SOCIETY.

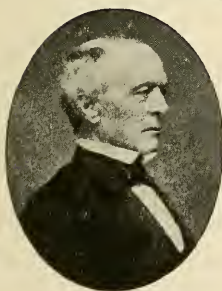
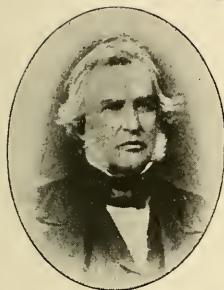
To the Honorable Legislature of the State of New York:

GENTLEMEN:—The undersigned, a select committee of the Medico-Legal Society of the State of New York, have been directed by that body to submit to the Legislature of the State of New York a memorial, urging upon them the expediency of the abolition of the office of Coroner, by appropriate legislation, amending or modifying the present law regarding the duties of Coronors, or the adoption of legislation to change entirely the existing system and avoid the evils of the present law now universally considered to need reformation.

The Medico-Legal Society for more than a decade has strongly urged the abolition of the office of Coroner, or such change in the existing Coroner system as would give the required relief, if the abolition was thought impracticable.

The office of Coroner and the procedure under the laws regarding that office and its powers and duties were the subject of keen discussion, both in England and several of the American States, as early as 1876. In October of that year Mr. Farrar Herschell, Q. C. (now Lord Chancellor of England), brought it to the attention of the British Science Association at Liverpool in an admirable address, which aroused great interest on both sides the Atlantic.

Mr. Theodore H. Tyndale, of the Boston Bar, a member of this committee, carried it before the American Social Science Association early in 1877, and succeeded in the adoption by the Legislature of Massachusetts of an entirely



EX-ASSOCIATE JUDGES.
DELAWARE COURT OF ERRORS AND APPEALS.

HON. DAVID HAGGARD.
1844-47.

HON. PETER ROBINSON.
1832-36.

HON. JOHN J. MILLEGAN.
1839-64.

HON. JAMES R. BLACK.
1832-39.

HON. EDWARD WOOTTEN.
1847-89.

HON. JOHN H. PAYNTER.
1887-90.

HON. CALER A. LAYTON.
1836-44.

HON. JOHN W. HOUSTON.
1855-93.

HON. LEONARD E. WALES.
1864-84.

HON. WM. G. WHITLEY.
1884-86.

new system, which abolished the office of Coroner in that State, and with his associates secured the passage of an act creating a Board of Medical Examiners and the adoption of an entirely new system, to which your attention is invited. The radical changes made by the Massachusetts act are as follows :—

First—Abolition of the office of Coroner.

Second—The dispensing wholly with juries on the preliminary inquiry in this class of cases as unnecessary.

Third—The adoption of a new system, by which a competent medical man took charge of the medical part of the investigation, and an arrangement for proper officials to take charge of the legal and judicial aspects of cases where the death was in any wise proper to be made the subject of legal inquiry, preliminary to the final trial of the accused after indictment.

In January, 1881, the chairman of this committee prepared an exhaustive paper upon the subject, which was read before the Medico-Legal Society, demanding the abolition of the office of Coroner, as then administered, and strongly urging the adoption of the plan which had been put into vogue in Massachusetts and which was then in successful operation.

In February, the same year, at the request of the State Medical Society of the State of New York, he again addressed that body upon the same subject, reviewing the Massachusetts law, the defects of the existing system in the State of New York, and in most of the other American States, and the practice in similar cases in foreign countries.

The Committee on Legislation of the State Medical Society reported that, having conferred with Mr. Clark Bell, they recommend the adoption of the following resolution :

Resolved, That in the opinion of the society it is desirable for the Legislature to thoroughly amend and revise the laws of this State in regard

to the office and duties of Coroners, and the society would recommend for their consideration the recent statute adopted by the State of Massachusetts (substituting the Medical Examiners for Coroners).

The report of the committee was accepted and the resolution unanimously adopted.

In June, 1889, the subject was brought again before the International Medico-Legal Congress, held in the city of New York, by Theodore H. Tyndale, Esq., in an address by him delivered before that body, and also by Mr. Clark Bell on the same lines as had been previously laid down, which addresses were published in the Bulletin of the International Medico-Legal Congress of 1889. Public attention was called to the utter uselessness of the office of Coroner (as now administered in the State) by the New York *Herald* and other public journals, and it was claimed and demonstrated that, instead of being an aid to the efficient administration of justice, as at present administered, the existing system was a distinct hindrance to it.

The Grand Jury of the County of New York conducted an inquiry into the method of the administration of the office of Coroner, as well as into the merits of the office itself, and made a presentment, which was ordered to be laid before your body and before the Constitutional Convention, to which your attention is respectfully called. Among its conclusions we cite the following :

We believe that the long standing maladministration of the Coroners' office in this county is a cause of embarrassment to the interest of public justice, and that a more suitable means of transacting the important business now done in the office of Coroner should be provided.

This presentment, too extended for this memorial, will be laid before your body.

Judge Fitzgerald, before whose court this presentment was made, thanked the Grand Jury for its labors, and ordered a copy to be forwarded to the Governor of the State, to the Legislature, and to the Constitutional Convention. That learned Judge said upon that occasion :

I heartily approve of this presentment, and I am glad to take this occasion to compliment the *Herald* for the serious and patriotic work it has done. Coroners' juries are useless and the Coroners' office is in many respects a hindrance to the proper prosecution of criminals. Its verdicts have little effect and its records are often misleading. The summaries of evidence which are sent to the District Attorney frequently omit the most important points. I hope that the State constitution will be so amended as to provide a better system.

At a meeting of the Medico-Legal Society, held November 13, 1893, the following resolutions were proposed by the chairman of this committee and were adopted after general discussion :

Resolved, That a committee of seven be named by the Chair who shall prepare a memorial to be forwarded to the Legislature of the State and to the approaching Constitutional Convention in favor of:

1. The abolition of the Coroner in the State of New York.
2. The adoption of appropriate legislation and changes in the constitution of the State that would remedy the defects in the existing system, and—
3. Briefly adverting to the labors of this body during the past years for the attainment of this result and to the recent action of the *New York Herald* and other journals and to the Grand Jury of New York County on the subject.

Carried after discussion.

The Chair named as such committee Clark Bell, Esq., Chairman; Judge Charles G. Garrison, of New Jersey; Judge Abram H. Dailey, of New York; Theodore H. Tyndale, of Boston; Wyatt Johnson, M. D., of Montreal; H. W. Mitchell, M. D., of New York, and Moritz Ellinger, of New York.

REMEDIES PROPOSED.

While the abolition of the office of Coroner would be most desirable, it is not the only way by which relief can be obtained.

A brief allusion to the system adopted by some American States and European countries may be of interest in the consideration of this subject.

THE MASSACHUSETTS SYSTEM.

The text of the Massachusetts law complete is published in the address of Clark Bell, read before the International Medico-Legal Congress of 1889 (page 405, Bulletin of that Congress).

At the request of the chairman of this committee Mr. Theodore H. Tyndale has submitted a short statement regarding the practical working of the law in the State of Massachusetts, which is as follows :

Previous to 1877 Massachusetts had the old-fashioned Coroner, whose duty it was to hold views and inquests on the bodies of persons found dead, where violence was suspected. The office was appointive, and although its functions required two-fold knowledge—medical and legal—it frequently happened that the appointee had neither legal nor medical knowledge, and sometimes, indeed, that he had very little knowledge of any kind. The office was apparently considered of little importance and was frequently given to entirely unqualified persons. Any person was free to apply for it, as the number of coroners was not limited, and it happened that just prior to the abolition of the office Suffolk County (consisting chiefly of the city of Boston) had forty-seven coroners—more than London, New York, Brooklyn, Philadelphia, Baltimore, St. Louis, Chicago, and New Orleans all taken together. The work—which dealt with the subject while the evidences of crime were fresh and comparatively easy of detection—served no useful purpose whatever; nothing was done with the jury's verdict after it was returned, and criminal proceedings were instituted entirely independently of it. Perhaps the only appreciable results were, first, the publication in the newspapers of a great deal of offensive and harmful matter, which frequently came out in the lax and illegal methods of admitting all sorts of evidence at the hearings, and, second, the frequent warning to and escape of the criminal by reason of the delay and publicity of these proceedings.

The jurymen, selected at random, had long become the laughing stock of the public.

The Medical Examiners' act, chapter 200 of 1877 (now Public Statutes, chapter 26), divided the functions formerly united in the Coroner, giving the physical examination to expert medical men (appointed by the Governor for seven years), and turning over to the already existing courts of first instance the duty of taking testimony and committing any person suspected of causing or contributing to the death, to let the judge determine if any crime, and what order of crime had been committed and deal with it accordingly.

The Medical Examiner goes to the spot where a dead body is found, takes witnesses with him (whose attendance he can compel by a subpoena) to note the position of the body and the surroundings; takes

charge of money and other property of the deceased; and, if on such views and personal inquiry into the cause and manner of death, he deems an autopsy necessary, he applies to the District Attorney, Mayor, or Selectmen for leave to make one. Medical witnesses may assist him in this, and the results are reduced in writing and copies are filed with the District Attorney and the Register of Deaths.

The Medical Examiner and medical witnesses are the experts for the government at any subsequent trial. He may also call in a chemist for analytical or microscopic examination.

The courts (district, municipal, or police, according to the locality) hold the inquest, compel attendance and take testimony in the usual way; can hold the inquest secretly (when deemed necessary) and make a report of their findings. Any person accused is at once and from the beginning dealt with by the courts. In practice this system, now in existence for seventeen years, has worked with precision and with valuable results. The cumbersome and useless jury is done away with—the work in its two branches, medical and legal, is done by men trained in their respective professions; many useless inquests (formerly held) are avoided, as competent medical experts can often at once pronounce the death natural or otherwise. Prompt and efficient prosecutions have uniformly followed upon the Medical Examiner's report of violence, and (so far as the medical testimony is concerned) have without exception resulted in conviction. The Commonwealth saves about one-third of the former expenses of the old system, a valuable body of medico-legal facts is gathered and preserved, and a great deal of harmful and untimely matter is kept out of the newspapers.

NEW JERSEY METHODS.

Hon. Charles G. Garrison, Associate Justice of the Supreme Court of New Jersey, a member of this committee, has, at the request of the chairman, submitted a statement as to the new law adopted in the State of New Jersey :

In New Jersey the office of Coroner has not been abolished; it has, on the contrary, been supplemented, and, in regard to some of its functions, superseded by the creation of a new office—that of County Physician.

The original act, entitled "An Act Respecting County Physicians," was approved April 21, 1876.

The general object of the act is to place the decision of the necessity of holding an inquest in cases of sudden death on the judgment of a licensed physician, who shall be a sworn public officer of the county in which the body is found.

Section 1 (Rev. 1877, p. 817) provides for the election, term, salary, and oath of county physicians. The election is by a majority vote of the Chosen Freeholders of each county, which body also fixes the salary. The term is three years. The act applies only to counties having a population of not less than fifty thousand.

Section 2 prescribes the duties of the County Physician, and reads as follows: "That it shall be the duty of said County Physician, in all cases of death in prison, and all violent, sudden, or casual deaths within his county, to take a view of the body and make all proper inquiry respecting the cause and manner of death, for the purpose of ascertaining whether an inquest shall be held; if, upon such view and inquiry, said County Physician shall be of an opinion that there is cause to suspect that the person whose body he has been called to view came to her or his death by murder or manslaughter, or by the connivance, aiding, procuring, or other misconduct of any person or persons, then it shall be his duty to call upon one of the Coroners of the county, or, if such Coroner cannot be had, upon a Justice of the Peace in said county, and request him in writing to issue the precept for the summoning of the jury of inquisition, to consist of not more than fifteen nor less than nine, and to hold an inquest and make return of the same according to law, and any post-mortem examination or other medical service required upon said inquest shall be performed by said County Physician."

Section 3 provides that in case of vacancy of the office of County Physician from any cause, the Coroner or Justice of the Peace shall hold inquests as theretofore.

Section 4 permits a County Physician who shall, from sickness or other cause, be unable to perform his duties in a given case, to nominate and appoint another physician *pro hac vice*.

Section 5 makes the jurisdiction of the County Physician exclusive, and prohibits Coroners from acting, save as directed in and by this act.

An amendment passed in 1880 (P. L., p. 301) concerns the custody of personal effects of deceased persons.

By an amendment in 1885 (p. 299) Coroners are empowered to hold inquests as theretofore, if the presence of the County Physician cannot be obtained within six hours after notice in writing, given to him personally or left at his dwelling house.

Such is an outline of the system that has been in force in New Jersey for nearly twenty years. Practically it works well. The office of County Physician is highly esteemed, and is, as a rule, filled by medical men worthy of public confidence.

Occasionally collisions of authority have occurred; not, however, of a character to interfere with the public service. The constitutional efficiency of the title of the act to support that part of its body that abolishes the original jurisdiction of Coroners has been looked at a little askance by the lawyers, but, so far as I know, has not been drawn into controversy in any case litigated before an appellate court. No complaints have reached my ears except from those curtailed in fees, and no suggestions of an amendatory nature are mooted.

The act, as originally passed, was extremely simple, and remains to-day substantially as it left the hands of the Legislature.

CONNECTICUT.

In Connecticut the office of Coroner is retained, the duties being purely judicial, and there are Medical Examiners who are charged with the medical side of the inquiry as in Massachusetts. Hon. Elisha Carpenter (one of the Justices of the Supreme Court of Errors of the State of Connecticut), a member of the Medico-Legal Society, has, at the request of the Chairman, submitted a brief statement of the law on this question, adopted in the State of Connecticut, which is as follows :

The office of Coroner was unknown in Connecticut prior to 1883. The duties of that office devolved upon any justice of the peace who might call a jury and hold an inquest. Now, by law, the Judges of the Superior Court and Supreme Court, at their annual meeting, shall appoint some attorney-at-law in each county as Coroner for three years. The Coroner shall appoint some reputable physician in each town as Medical Examiner. The duties of Coroner and Medical Examiner will be found in General Statutes of 1888, in Sections 2,003 to 2,023, inclusive. The Coroner has the discretion either to make the inquest himself, or call to his assistance a jury. If there has been any complaint as to the working of the system, it has not come to my knowledge. I have the impression that the law is working well.

DELAWARE.

Hon. Ignatius C. Grubb (one of the Associate Justices of the Supreme Court of Delaware), a member of the Medico-Legal-Society, thus writes to the Chairman of this committee, in response to a request for a statement of the present law of that State :

Replying to your recent inquiries regarding our Coroners and Coroner System, I would say : Article VII of the Constitution of Delaware provides that the Coroner of each county shall be chosen by the citizens residing in such county for two years and shall be commissioned by the Governor. The Governor shall fill vacancies in the office, by appointment to continue until the next election and until successors shall be duly qualified.

The Constitution provides that the Coroner shall be a corrector of the peace, within the county in which he resides, but does not otherwise prescribe the powers or duties of Coroner.

Those are conferred and defined entirely by statute.

By statute, Coroners are required to give bond and to take an oath or affirmation for the faithful discharge of their duties.

Chapter XXXIII of the Laws of Delaware (which are found in our Code of 1874) provides for and regulates the powers and duties of the office of Coroner. These provisions are contained in 18 sections.

Section 1 provides for a Coroner's jury in all cases of not less than 12 nor more than 23 (except in New Castle County, where the jury shall be not less than six nor more than nine). Section 2 directs how the inquest shall be held and verdict rendered.

The Coroner conducts the inquiry, summons the witnesses, and the evidence is reduced to writing, signed, and certified by the Coroner; he has power to arrest and commit for trial, and, in case of justifiable homicide or manslaughter, may bail the accused, and he returns all proceedings and evidence to the Attorney-General of the State. In case of absence of Coroner, or where there is no Coroner, the nearest Justice of the Peace to where the body was found may act as Coroner, with the full powers of a Coroner.

The Coroner has common law powers as to acting as Sheriff in certain cases, provided for in the act.

The Coroner's compensation is derived solely from fees prescribed by law, in all our counties except New Castle County, our most populous county, where, by act of 1879, he received an annual salary in lieu of all fees and perquisites, except when he performs the duties of Sheriff, for which he receives the same fees as are prescribed for the Sheriff.

In New Castle County a visiting physician, appointed by the Trustees of the Poor of said county, shall be the Coroner's Physician in case of an inquest, and shall receive for his services an annual salary from the county. Both the Sheriff and his physician are prohibited by law from receiving any sum or sums of money other than their respective salaries and fees from any source whatever.

The foregoing will cover all the provisions of the Constitution and Statutes of Delaware, respecting the general powers and duties strictly belonging to the Coroner's office.

In addition to these are certain duties respecting elections when the Sheriff is absent, and also in regard to making complaint of violation within his own knowledge of our liquor laws. But I presume that these are immaterial for your purpose.

In conclusion, I am not aware of any serious inefficiency of our present Coroner System, or of any urgent or general desire for its abolition or alteration.

In our State there is not probably so much necessity for a change as in New York, where the business is much greater, and the objections more serious than here. It is a part of our time-honored English institutions, which our people are yet slow to change, and which are really well adapted to our condition and needs.

RHODE ISLAND.

Rhode Island has adopted the Medical Examiner System, and Medical Examiners are appointed by the Governor of

the State, to hold office for six years. The Coroner in this State is not abolished, but one is elected in each town, holding office for three years, and attends to the legal or judicial questions involved; and the Medical Examiner is charged with the medical questions and conducts the examinations and autopsies. In brief, the Rhode Island system is almost exactly like that of Massachusetts, except that the Judge is replaced by an officer called Coroner, whose duties are purely judicial.

QUEBEC, DOMINION OF CANADA.

In this Province similar abuses exist in the Coroner's System as are made the subject of complaint in the State of New York. Dr. Wyatt Johnson (a member of this committee) was directed by the Attorney-General of Quebec to make an inquiry into the practical working of the Coroner's office in certain of the American States and to report the same for the benefit of the Dominion Government. He brought the subject before the Medico-Legal Society in May, 1893, and through the MEDICO-LEGAL JOURNAL and the Medico-Legal Society issued a circular letter to the Coroners throughout the American States and the Provinces of the Dominion.

He has completed his report to the Attorney-General of Quebec, from which important data is utilized by this committee for your consideration, and to which report we refer as a whole, it being too extended to submit herewith.

The plan recently adopted in Quebec (of having a lawyer appointed as Coroner, and an official making medical examinations, which was adopted under the Act of 1892), is too recent to be quoted as to its practical working. The recommendations of Dr. Wyatt Johnson's report are the introduction of a law similar to that now existing in Connecticut,

providing for Coroners who have the legal and judicial qualifications to conduct the legal side of the inquiry, and for medical examiners who are charged with the medical side of the inquiry, and setting out definite instructions as to the duties of both and each officer; and providing for the appointment in each district of official Medical Examiners, to inquire :

1. Whether death was due to violence or to natural causes.

2. The examination of the body by a Medical Examiner, and an inquiry made jointly by the Coroner and by the Medical Examiner in cities and by the Medical Examiner alone in rural districts, with written records of all proceedings.

3. Autopsies to be authorized where the cause of death is unknown and the circumstances of the death are suspicious.

NEW HAMPSHIRE.

In this State no Coroners intervene except where deaths are suspicious, or there is reason to believe crime has been committed. Coroners call to their assistance any physician they may think fit to aid them.

ONTARIO, DOMINION OF CANADA.

There are 28 Medical Examiners in this Province. Inquests are held only when there is suspicion that death is due to violence. Inquests are not held under any other circumstances, and can only be held on the fiat of the Crown Attorney. The subject of introducing a Medical Examiner or Medical Officer is understood to be under consideration.

SCOTLAND.

As is well-known, no institution similar to that of Coroner exists in Scotland. All inquests of this character are made

by the Procurator Fiscal and the Police Surgeon for the district. The proceedings are kept secret and the public are not permitted to be present at the investigation. The practical working of this system has been economical and efficient in the past, but there has been some recent agitation in the direction of allowing the general public access to the hearing of proceedings before juries where death appears to be due to negligence.

FRANCE.

In France two distinct and separate officers take charge of all such investigations. The legal officer (the *Procureur du roi*, or, as he is now called, the Procurer or Attorney of the Republic—analogous in some respects to our District Attorney) proceeds to the place where the dead body is found, makes the investigation, summons and examines witnesses, and reduces their evidence to writing, which is subscribed. He has large power granted him as to seizing articles and papers if connected with crime, and can restrain suspected persons from leaving the premises or the neighborhood. He has the power to use experts or clever detectives (which is a part of the French system of the detection or discovery of crime). He is responsible for the case as a legal inquiry, and for all the legal questions involved.

The medical side is in charge of a medical officer chosen for his superior and excellent medical knowledge, with powers almost equal to those of the *Procureur du roi*, but supreme as to the medical examination, inquiry, and all medical questions involved, and this officer—and sometimes two—is connected also with the subsequent prosecution of the criminal when a crime has been committed, or the legal officer decides that one has been committed.

GERMANY.

The present law of Germany relating to Coroners is governed by the Code of Criminal Procedure (*Straf-Process*

Ordnung). A judicial officer, called the District Attorney (Stats-Anwalt) has charge of these proceedings. He is clothed with powers as full as those of our District Attorney, of a Committing Magistrate, or a Police Justice. He is entitled to ask information from all public authorities who are bound to assist him in his official duties.

The police are his subordinates and under his control in all respects in the investigation of crime.

The police authorities are also bound on their own account to investigate supposed crime and report to this officer, especially in all cases of sudden death or death by violence; and in these cases no interment of the body is allowed until after the consent has been obtained of the District Attorney or of the competent court. There is no Coroner in Germany, nor any analogous officer, nor any jury on the preliminary examination.

There are judicial district physicians or surgeons regularly appointed, selected for their special training and fitness for the duty. They are summoned by the District Attorney or by the police authorities, and examine the body, make the autopsy, and conduct in all respects the medical examination.

The Grand Jury and its indictments, as in our system, is unknown in Germany.

If the District Attorney, after the preliminary examination and inquisition has been made, and the evidence and medical examination and report made, believes that a crime has been committed, or that probable cause exists for such a belief, he brings on the trial by a motion to the competent court; and if the court, on such motion, after hearing the case, believes that sufficient reasons are presented, it orders a preliminary judicial investigation (gerichtliche voruntersuchung), which is conducted before a justice, with the

assistance of the District Attorney, at which the accused is heard, and is represented by counsel, if he desires.

The result of that preliminary investigation usually determines the matter. If the District Attorney desires to press it, he moves it on; if not, the case is usually dropped.

NEW YORK.

The office of Coroner in New York is created by the Constitution, and there are four to be elected in each county of the State.

That instrument does not, however, define any of his powers or duties.

These rest wholly upon statutes adopted by the Legislature of the State, which have been frequently changed, amended, and modified in various respects.

It is within the power of the Legislature to amend the existing system in any respect, in regulating, defining, and fixing the authority, powers, duties, and compensation of this officer.

A similar power has been exercised by the Legislature of the State of New Jersey, which (in creating a county physician and providing for his powers, duties, compensation, and practice) is found to work smoothly, and, while it practically superseded the Coroner, it was not thought necessary to abolish that officer in that State.

RECOMMENDATIONS.

Your memorialists, after duly considering the premises, unanimously recommend to your honorable body :

That you amend the existing statutes, regulating the powers, duties, and compensation of Coroners.

(*a.*) By creating a new officer, to be styled "Medical Examiner," as in Massachusetts and Connecticut, or "County Physician," as in New Jersey, who shall be authorized to

conduct inquests or examinations in all cases, where death has occurred by violence, or there is reason to suspect that the same is due to other than natural causes, having charge of all autopsies and all questions on the medical side of the inquiry, without a jury before a competent court, or before the Coroner as a judicial officer, if retained after the plan adopted in Connecticut.

(*b.*) That said Medical Examiner be appointed by the County Judges of each county, except New York, and by the Chief Justice of the Court of Common pleas in that county, and only physicians skilled in their profession, of at least five years' practice, to be eligible to such appointment, and, so far as possible, without reference to partisan political consideration.

(*c.*) That only persons learned in the law shall be eligible to the office of Coroner, and that if the inquiry is conducted before the Coroner, he shall have charge judicially of all legal questions, and that the hearing, inquest, and proceedings shall be the same as are before the Police Magistrate in the City of New York, or other cities of over 100,000 inhabitants, and before Justices of the Peace in all counties of the State, except New York and Kings Counties.

And your memorialists will ever pray.

CLARK BELL, *Chairman*.

CHARLES G. GARRISON.

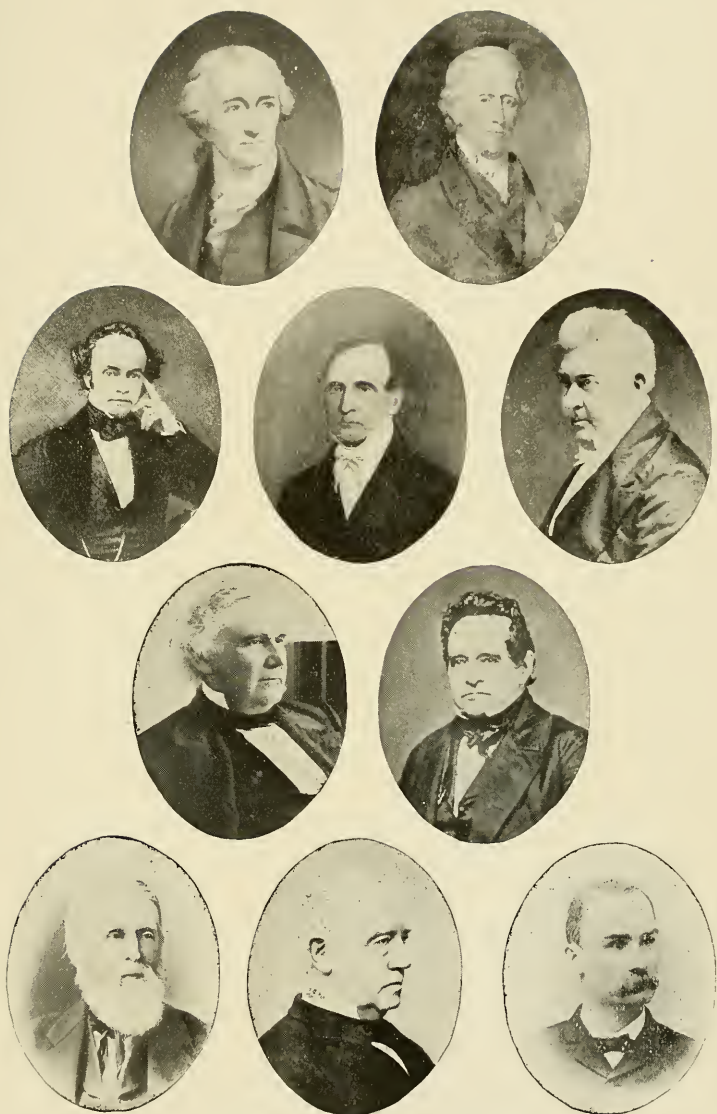
ABRAM H. DAILEY.

THEODORE H. TYNDALE.

WYATT JOHNSON, M. D.

H. W. MITCHELL, M. D.

MORITZ ELLINGER.



CHIEF JUSTICES OF DELAWARE.

GEORGE READ.	KENSY JOHNS, SR.
SAMUEL M. HARRINGTON.	THOMAS CLAYTON.
RICHARD H. BAYARD.	JOHN M. CLAYTON.
EDWARD W. GILPIN.	JAMES BOOTH, JR.
JOSEPH P. COMEGYS.	ALFRED P. ROBINSON

PENOLOGY AND PRISONS.

The public mind is now much engrossed with the criminal, and crime in its varied relations to society forcibly arrests our attention. Lombroso insists that the criminal must be himself carefully studied, rather than the crime he commits. How best to deal with the criminal after conviction may be said to be at this moment a question on which jurists and publicists throughout the civilized world are pondering. That evolution of thought which has been inaugurated by the Italian school, of which Lombroso, Enrico Ferri, and Marro are the most pronounced, and, as some think, advanced exponents, has been everywhere recognized.

Its most immediate fruits have been doubtless the modifications upon the continent of Europe of the whole basis and theory of sentences of convicted criminals, as evinced by the plan of indeterminate sentences, and by as great a revolution in the whole system of prisons, and especially the discipline of criminals in prisons.

The action as to the effect of postponement of sentences may be said to be upon trial, both as to the criminal himself and its result and relation to the volume of crime, and its results are of the gravest and most serious importance to our civilization.

It has become a fixed part of the Italian and French system, and exists in many continental countries. In the American States where such an unlimited and undefinable margin is purely within the discretion and breast of the judges, it is gradually working its way in many criminal courts. In Great Britain, where this principle has been in part applied,

or was, in reality, first inaugurated abroad, the present plan limits its force to penal sentences of three years and upward.

If the principle upon which it is based is sound and correct, it is doubtful if its application should be ignored and lost on lesser crimes than those receiving long sentences, especially in first offenses.

The legislators of many American States are thoughtfully considering this question as to how far it should become a fixed part of our system by legal enactments.

Upon this question the views, experience, and observation of the judges who set in our criminal tribunals would be of great value.

The subject of the proper treatment of the criminal in prison is at this moment receiving an undue amount of public attention. How far the great Penologist, Dr. Paul Aubrey, is correct in his observation "that the prison is still the best school of crime we possess" is worthy of thought.

The criticism is undoubtedly true to-day of the prisons of many countries and with those who believe the environment has more to do with the criminal than heredity. It is a more difficult problem to devise a prison system that would not be subject to this charge.

The experiment at Elmira Reformatory, is, perhaps, nearest the realization of such an idea of any prison in the world at this moment. Upon its results the thoughtful minds of all the world are now centered with profoundest interest.

Mr. Stuart Erksine, in an able article published in the New York *Herald* of a recent date, quotes Sir Edmund du Cane, who, as director of prisons in England, is, from the nature of his position, high authority, as saying regarding the introduction of the system pursued at Elmira:

I do not believe the introduction of the Elmira system into this country to be within the range of practical possibilities. If a man com-

mits a burglary or a forgery, or half kills his wife, how can it be supposed that he will be reformed by trusting him while he is in prison? So far as I have seen, the descriptions of the Elmira treatment seems to show that it relies on making the life of the criminal exceptionally happy. They enjoy high feeding, high education, and a full share of amusements, and they would, I should have thought, be very unwilling to be released. I can think that the treatment would deter anybody from crime.

I have always taken a great interest in the question of industrial training and employment of prisoners, and we do whatever we can to effect that object. There are many distinct limits, however, to what can be done in this direction under the necessary conditions of private life. It is a mistake, I believe, to suppose that people get into prison because they cannot get honest employment; but, in any case, it is obviously impossible to teach a trade to a person who is in prison for a few days or a few weeks, and who has to pass that time in a separate cell.

There is the question of expense, moreover, to be thought of. Nevertheless, I should be exceedingly glad to hear of any trades which could be taught and carried on to produce any profitable result.

The finding a market for the results of prison labor is also a very difficult matter. I have found that people not directly benefitted by such trade care not what happens, and on the other hand there are many strong and powerful interests who think they suffer if prison labor in any way comes into competition with them. We can, however, and do find good employment for a great number of our prisoners in providing many articles for prison use, and to some extent in making articles for the government departments, and in the convict prisons many have public works constructed entirely by convict labor, so that it is very far from the truth to say that nothing of the sort is attempted in Great Britain, for continuous efforts have long been made, and are still being made to provide useful employment for prisoners.

It is probable that a visit by Sir Edmund to Elmira would doubtless modify his views as to the practical working of that prison. It must be remembered that it is exclusively for the young, and there can be little doubt that its work is an immense advance step in the whole subject, considered in its relation to and effect upon the criminal, and as a deterrent against the commission of crime in the future.

Human experience teaches us, it seems to me, one great truth, that severity of punishment does not operate as a deterrent against the commission of crime.

The relative volume of crime was not increased by the repeal of the laws in Great Britain limiting capital punish-

ment to three instead of one hundred and fifty offenses. While not prepared to favor the abolition of capital punishment, candor compels the admission that the volume of crime diminishes in those States where it is abolished.

If society, in its punishment of offenders, can at the same time preserve the majesty and supremacy of the law and save the offender from future criminal acts, it would be laudable and praiseworthy to do so.

Whether Lombroso and his confrères are correct or not, the future of the criminal in his relation to the State is most intimate, most important, and the Elmira experiment is the most conspicuous object for thoughtful penologists everywhere. In the State of New York it is unfortunately complicated with the question of corporal punishment as a part of its system of prison discipline, which is of little consequence when compared to the great question underneath the effort there now attempted. If corporal punishment in prisons should be abolished by law and the effect upon prison discipline should be shown to be beneficent by its abolition, the Elmira Reformatory would be the greatest gainer by the change of any prison in the world, because it now stands as the most advanced in that school which seeks to work reformation in the future life and conduct of the offender.

The theory of human punishment for crime has ever been that it is only permissible as a deterrent and never as in any sense punitory in its effects upon the criminal. Unfortunately the prisons of the world are not organized upon this basis. That of Elmira comes the nearest to it of any within my knowledge, and it is a public misfortune to the student of penology that the public mind has been diverted from the great problems involved by a personal assault upon the Superintendent as to a minor question of the proper use of corporal punishment in its prison discipline of refractory criminals, always youths.

THE ELMIRA REFORMATORY AND THE STATE BOARD OF CHARITIES.

As we go to press the report of the State Board of Charities upon the investigation of the prison discipline of the Elmira Reformatory has been transmitted to the legislature, with a sweeping and scathing indictment of the Board of Managers of the prison, whom they hold responsible for the acts of the Superintendent.

The State Board condemns the method of "paddling" of convicts as practiced at Elmira, and while they characterize the exercise of this punishment by the Superintendent in some instances as cruel, their censure is upon the Board of Managers, under whose authority and by whose full approval the Superintendent acted.

While they recommend the removal of the Board of Managers, they do not recommend the dismissal of the Superintendent, the weight of their decision falling upon the Board.

The investigation was originally placed by the State Board in the hands of its late President, Mr. Oscar Craig, of Rochester; Dr. Stephen Smith, of New York, and Mr. E. G. Litchfield, of Brooklyn, who conducted the inquiry.

It is a peculiar fact that the death of Mr. Craig and the temporary absence of Dr. Stephen Smith in Paris left only one signature, that of Mr. Litchfield, upon the report of which he is presumably the author. Dr. Stephen Smith was within easy reach by cable and mail and does not sign the report, nor is any statement made whether a copy was sent him or not for approval.

As is usual with boards, the report of its sub-committee seems to have been approved, although by these circumstances the act of only a single individual.

The untimely death of Mr. Oscar Craig at this juncture has been most unfortunate. His views upon corporal chastisement were given (not in prisons, but in the matter of the Rochester Orphan Asylum after an investigation of that institution in 1890) as follows :

No more conservative rule can be adopted than that which has heretofore obtained by general agreement of reasonable men for family government. This general rule I venture to state, permits the corporal chastisement of children, in a family, proportionate to the nature of the offense and the character and condition of the offender to which they are applied; in the reasonable discretion of the parent or the person *in loco parentis*, administering the same; but only upon the conditions that the castigations are not to be inflicted (1) while the parent is in an angry or unduly excited mood; or, (2) for mere irregularities or slight misdemeanors; or, (3) in immoderate or excessive degrees.

We have reason to believe that Dr. Stephen Smith held similar views. The line between the Board of Managers of the Elmira Reformatory and the State Board of Charities is most distinctly drawn, the one favoring and justifying corporal chastisement of criminals in prisons, and the other condemning it as practiced at Elmira. This brings up the broad question of whether prison discipline as now generally practiced shall be justified by law or abolished. It has everywhere existed as is believed, but the daylight has not been turned upon it before. Different minds would regard the same punishment of a child by its parent, or a pupil by a school-master, from entirely different standpoints.

Boys were flogged at school in my boyhood, and sons by fathers, in a manner that Mr. Oscar Craig, if alive, would characterize as cruel now. Flogging was in vogue in the navy, and the whipping-post still exists in Delaware. The late and much lamented Gov. Biggs warmly defended its continuance there as most efficient and salutary as a deterrent

to the commission of small offenses, which the statistics of that State fully justified. I do not take sides in the controversy as to whether "paddling" shall or shall not be abolished in our prisons. If discipline can be maintained without it, let it go. The grave danger of the action of the State Board of Charities lies in the moral effect of its action upon the splendid work the Elmira Reformatory has done for the world in the great work of prison reform.

A change of the management of the Elmira Reformatory that would for a moment impair its usefulness in the eyes of the world would be a public calamity—a National misfortune.

Upon the question of the higher problems of prison control and reform the Managers of the Elmira Reformatory have well won a splendid record. They are experts (and deservedly so) in matters of which the State Board of Charities know relatively very little. The latter Board is advisory merely, and it is a Board peculiarly susceptible to popular clamor, and likely to be influenced by the press, which has played a very conspicuous part in this affair.

It will be remembered that Governor Hill strongly recommended to the legislature of the State the abolition of the State Board of Charities, so that, in that respect, the two Boards are similarly situated.

The recommendation for the removal of the Elmira Board is a remarkable one, and (even if it has erred in the matter of "paddling") it is rather a harsh recommendation regarding a Board that has in the past received encomiums from thoughtful students of penology in all lands.

THE RAILWAY SURGEON AND THE LAW.*

BY CLARK BELL, ESQ., OF THE NEW YORK BAR.

The railway is the most important factor in its influence upon civilization that the present century has produced.

The first railway was operated as early as 1829, but it was in 1832 and later that the packet-boat on the canals, which had superseded the stage-coach, gave way to the locomotive.

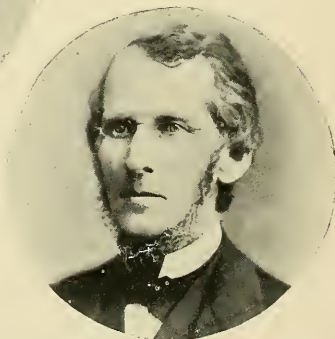
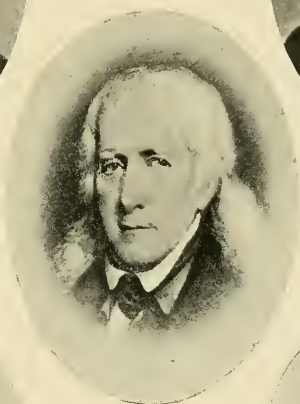
The recent Columbian Exposition at Chicago illustrated practically the growth and evolution of American railways during the past sixty years. The early locomotives and the improvements stood there side by side.

It has been a gradual, but, as a whole, a grand and magnificent evolution, creditable to the genius of our people, and without which the stupendous and marvellous development of our country would have been impossible, and which even with its wonder working changes is well nigh inexplicable.

Our century has been called the age of steam and electricity. The railway and the electric telegraph have been the hand-maidens of the genius of civilization, who have transformed the wilderness of this portion of the American continent into a lovely land of beautiful homes of a great people, which excites alike the wonder, the admiration, and the envy of mankind.

With these enormous advantages, which the construction and operation of railways have bestowed almost as a legacy upon the race, have also come enormous responsibilities, great antagonisms, and the creation of new laws, rules, and conditions, which, recognizing the magnitude of the bless-

*Read before the Medico-Legal Society, May, 1894, and before the National Association of Railway Surgeons (Annual Meeting) at Galveston, Texas, May, 1894.



EX-CHANCELLORS OF DELAWARE.

NICHOLAS RIDGLEY,
1801-1830.

KENSY JOHNS, SR.,
1830-1832.

KENSY JOHNS, JR.,
1832-1857.

SAMUEL M. HARRINGTON,
1857-1865.

WILLARD SAULSBURY,
1873-1892.

DANIEL MOORE BATES,
1865-1873.

ings conferred, have grappled with the problems of the relation of the railway to the general public, and its responsibility as a common carrier, under the elementary principles of law that have been created for the era and methods in use before the transformations due to electricity and steam.

Necessity and practical trial have been the stern, the inexorable, and the costly teacher to the managers and promoters of railways, and the lessons taught in such a school furnish that knowledge, gained by experience, which all agree is the most valuable of all human knowledge, and usually the most costly.

The railway surgeon, like the railway lawyer, became a necessity of the situation. It took a longer time and a broader comprehension of the true field of proper administration and economic management to illustrate to railway officials the absolute necessity of a competent and thorough surgical service than that of the necessity of legal counsel. The one had to be engaged from the organization and during the preliminary steps of construction, while the other came after the railway was completed, and when the inevitable, but, sometimes, fortunately, long deferred, accident occurred.

Surgery itself, which had been stagnant and torpid during more than the first half of the struggle, began to show signs of awakening, and during the last twenty-five years has developed a growth as marvellous in many respects as that of which we have spoken, which has also excited the interest, the admiration, and the wonder of the race.

Whatever may be said of medicine and its practice as a science, surgery is now recognized everywhere as an exact science, and its evolution and progress in the past twenty-five years of the present century has been greater and more conspicuous than during all the preceding years of the Christian era.

The part played by American surgeons in these advances have filled the most luminous pages of surgical history.

Surgery rests on firm, solid, and sound foundations; electricity is at this moment her splendidly trained obedient servant, and some of the grandest and proudest recent achievements of surgery are due to this wonderful and mysterious agent.

The managers of railways as a class are of the ablest, most comprehensive, and most skillful men in our land. They who have thought most and best upon this subject have utilized the surgeon as one of the most valuable helpers in this work in its relation to the community, which are the patrons of the railways.

The great railways now, nearly all, have each its chief surgeon and its local surgeons. Those who do not are behind the age and not in touch with the progress of events or the needs of the hour.

THE RELATION OF THE SURGEON TO THE LAW.

I cannot in the space of a short paper speak in detail upon so important a question, and shall only give outlines and suggestions at this time.

First.—It goes without saying that the surgeon should be profoundly versed in the especial knowledge of his own profession. He should not hesitate for a moment to place himself *en rapport* with and abreast of the advance of surgical scientific thought, knowledge, and discovery.

The ablest surgeon would find great advantage by short courses of study at the great centers where practical, experimental work, illustrating the latest and most advanced discoveries, are seen and studied.

Second.—His education should embrace also a knowledge of the science of forensic medicine, to enable him to understand the questions of responsibility in their general ele-

mentary bearings in what are commonly known as railway damage cases.

I do not mean that a railway surgeon should aim to become a railway lawyer, but I do insist that he should not consent to be ignorant of the elementary principles of law involved, nor should he be ignorant of the well-settled and well-established principles of decisions which should govern such cases in the courts.

Third.—As his professional duties call him to the stand as a medical expert witness, he is bound by every consideration to qualify himself for the proper discharge of that duty.

It is not enough that he understands his profession only. It is a part of his duty, whether he is a witness for the company or for the injured, to know *how* to give his evidence; what his rights are on the stand as a witness, what is proper for him in his position to state, and how properly to state it, and what he should not state. Many a physician who has neglected this field of study has lost his reputation and destroyed his prospects, sometimes in an hour, by inexcusable blunders on the stand as a witness. It would require an essay to define this in detail. A knowledge of the law, of the powers and duties of expert witnesses, and of expert and opinion evidence, is almost as necessary for the expert witness when a railway surgeon as for the counsel who tries the case, and the railway surgeon who recognizes this and provides for it is wise, and if he neglects it he is unwise.

RAILWAY COMPANIES AND THEIR INTEREST IN GOOD SURGEONS.

No class of litigants are exposed to such dangers in damage cases as railway corporations.

Without knowing why, all counsel recognize the fact that the sympathies of juries are not only against the corpora-

tions, but their sympathy often seems to have higher claims and stronger holds upon the average jurymen than conscience or the sense of abstract justice.

A different code of moral ethics seems to exist between corporation and poor claimant than between man and man in the estimation of juries.

It is not an over-estimate to place the losses of railways in damage cases by miscarriage of justice at millions of dollars. With some considerable thought and reflection upon the subject, I am of the opinion that in many of these cases a competent railway surgeon could have saved his company large sums of these losses.

Take the case for example cited by that eminent nestor of American surgeons, Prof. Lewis A. Sayre, in his paper read before the Erie Railway surgeons last January.

Dr. C. W. Hackett, in 1877, met with a railway accident on the Sangus branch of the Eastern Railroad, between Boston and Maplewood, at Everett Junction, that produced paralysis. He brought suit, and recovered an enormous verdict—some \$39,000 or \$40,000. Prof. Sayre, in 1879 and 1880, was called in and suspended him—took the pressure off the injured parts and cured him by his plaster of Paris methods.

Had Dr. Sayre been the surgeon of that corporation, or any surgeon who understood his business, the patient would have been saved two years of suffering and the company probably \$30,000 in cash, aside from the costs and expenses of the trial.

Intelligent railway management to-day, as a matter of business duty and fair-dealing, always desires to adjust railway injuries without trials or law-suits, for they realize their danger before juries.

The intelligent railway surgeon is as necessary to shield the corporation from an exorbitant or improper or fictitious

claim as he is to aid the injured in case of a substantial injury to a proper and adequate redress. Who but an acute and intelligent surgeon can detect the sham from the real in the diagnosis when an injury has occurred ?

The pressure upon my time has been such that I can only present a few thoughts for your consideration, which must needs be brief and, perhaps, unsatisfactory, but the growing importance of railway surgery, its recognition by surgeons throughout the country, and the interest it has excited by railway managers in the recent past, emboldens me to allude to the movement in the Medico-Legal Society to organize a Section upon the medical jurisprudence of surgery, which has been called that of Railway Surgery, but which should and will embrace all surgical questions where medico-legal questions arise.

A large number of the prominent and leading railway surgeons of the National Association of Railway Surgeons have united with it, and the President and several members of the New York State Association of Railway Surgeons and the Erie Railway Surgeons are in hearty sympathy with it and have joined this society.

The questions here discussed, and, indeed, all the broad field of railway and medico-legal surgery, will be within the scope of its domain of investigation, and it should be the means of enlarging the horizon lines of surgical thought to all students of the medical jurisprudence of surgery, whether of the medical or legal profession, and cannot fail to be of interest to railway managers and railway men generally who are eligible to its membership, whether they are lawyers or surgeons or general managers of railways.

An initiation fee of \$5 and annual dues of \$2, outside the State of New York, entitle each member to the MEDICO-LEGAL JOURNAL free of charge, and the Section now formed is under the management of a Chairman and ten Vice-

Chairmen, selected from each profession from among the most prominent surgeons in the National Association, of which the Surgeon-General of the United States has consented to be one, and upon the legal side from distinguished railway lawyers and jurists throughout the United States.

The following are the officers of the Section for the year 1894 :

Chairman,

GRANVILLE P. CONN, M. D., OF NEW HAMPSHIRE.

Vice-Chairmen,

Legal.

CLARK BELL, Esq., OF NEW YORK.
HON. C. H. BLACKBURN, OF ILLINOIS.
JUDGE JOHN F. DILLON, OF NEW YORK.
JUDGE L. A. EMERY, OF MAINE.
JUDGE W. H. FRANCIS, OF MONTANA.
HON. GEORGE W. FELLOWS, OF N. H.
HON. W. C. HOWELL, OF IOWA.
HON. GEORGE R. PECK, OF ILLINOIS.
HON. J. M. THURSTON, OF NEBRASKA.

Surgical.

GEORGE M. STERNBERG, M. D.,
SURGEON GENERAL OF THE UNITED STATES.
CHARLES K. COLE, M. D., OF MONTANA.
W. J. GALBRAITH, M. D., OF NEBRASKA.
R. S. HARDEN, M. D., OF NEW YORK.
J. B. MURDOCH, M. D., OF PENNSYLVANIA.
THOMAS H. MANLEY, M. D., OF N. Y.
W. B. OUTTEN, M. D., OF MISSOURI.
R. HARVEY REED, M. D., OF OHIO.
NICHOLAS SENN, M. D., OF ILLINOIS.
S. S. THORNE, M. D., OF OHIO.

Secretary,

CLARK BELL, Esq., OF NEW YORK.

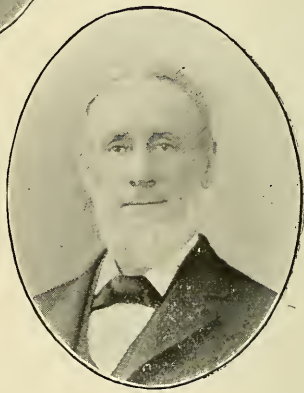
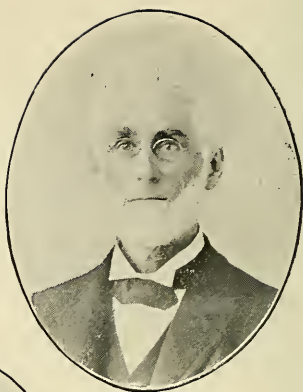
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JUDGE JOHN F. DILLON, OF NEW YORK.	CHIEF SURGEON B. F. EADS, OF TEXAS.
CHIEF SURGEON JAMES M. DINNEN, OF INDIANA.	



DELAWARE COURT OF ERRORS AND APPEALS.

HON. IGNATIUS C. GRUBB,
Associate Justice.
May 25, 1886.

HON. CHARLES B. LORE,
Chief Justice.
March 21, 1893.

HON. JAMES L. WOLCOTT,
Chancellor.
May 5, 1892.

HON. DAVID T. MARVEL,
Associate Justice.
Feb'y 1, 1893.

HON. CHARLES M. CULLEN,
Associate Justice.
August 28, 1890.

RAILWAYS AND RAILWAY SURGEONS.*

BY CLARK BELL, ESQ.

While a considerable number of the great American railways have adopted the system of an organized surgical service, under the supervision of a surgeon in chief who is responsible to the railway management, it is a well known fact that a large number of our railway lines, some of our most important railways, like the New York Central, have not done so, and the subject is one of commanding importance to the managers of railways, the surgeons of the country, and more especially to the general public, for whose benefit and convenience railways are primarily constructed and operated.

Railway surgeons everywhere concede and recognize not only the feasibility of such a service, but, as a whole, the surgeons of the country will agree that only in such a systematized service can the best professional work be obtained and the sufferers by railway accidents most successfully treated.

The general public favors such a service, so far as they speak or are heard from. But their position is to hold the railway responsible, in case of accident, for damages, and it is probable a neglect of duty not to establish such a

*Read before the National Association of Railway Surgeons at Galveston, Texas, May 11, 1893, and Medico-Legal Society, June 13, 1894.

service on the part of a railway. The cost of its omission is usually found covered by the heavy verdicts in damage cases awarded by juries against the roads that are not protected by their surgical system.

The settlement of the question, so far as those railways that have not yet established a surgical service are concerned, rests now almost exclusively with the boards that manage the affairs of railways.

It is mainly to railway managers that I shall address some of the reasons, which, to my mind, are worthy of serious consideration in grappling with the problems presented by the proper consideration of this subject.

It resolves itself into a twofold aspect.

1. Should railway managers organize a surgical service as a matter of prudence, economy, and safety in the proper management of their roads, and if so, how?

2. Would it be wise for every railroad of any importance to found and establish its own hospital service?

Let us examine the first proposition at the outset, but they mingle in spite of our desire to consider them separately. In all cases of accidents upon railways the sufferer at once falls either into the hands of the surgeon of the road, if it has one, or into the hands of the sufferer's physician, if it has not.

Assuming that it should be the policy of a railway to furnish the medical and surgical service of those injured on its line without cost to the injured, it does not need argument to show that any railway would be safer from extortionate charges or exorbitant claims from its own surgeons than from strangers.

When the fact is known that a large number of our American railways have established, organized, and equipped a complete surgical service, with a staff of local surgeons distributed over their lines, and that these roads have been con-

ducting and managing their roads under such a service, it at once becomes a question of deepest interest and concern to know what has been the result of such efforts, and to ascertain both from the surgeons and from the managers of such lines the result of their experience.

More than one hundred chief surgeons have been already appointed on our American railways under a surgical system established on the lines naming them. A large number of railways have a semi-surgical system, where local surgeons in the employ of and under the appointment of boards act as local surgeons, like the Erie railway system, extending from New York to Chicago on that line of railway.

I have made inquiry of a number of railway managers and railway surgeons, requesting their views on this grave subject.

I submit some of the many answers, to which I desire to call the attention of Railway Presidents, General Managers, and the Boards of Directors of Railways.

The General Managers of the Missouri Pacific system, a very high railway business authority, from a purely business standpoint, replies as follows:

ST. LOUIS, April 10, 1894.

CLARK BELL, ESQ., EDITOR MEDICO-LEGAL JOURNAL,

No. 57 Broadway, New York.

Dear Sir:—Replying to the interrogatories propounded in your favor of 1st inst., regarding the railroad hospital system, beg to advise as follows:

First.—It operates practically in securing and promoting harmony among all classes and conditions of employes in cases of injury and sickness, the preference in almost every instance being in favor of treatment at the hospital, or under its control, where the department is properly organized. Better results are accomplished for sick and injured employes, because of the superior facilities the hospital department secures for nursing and caring for the employes, and that at a cost nominal to the employe.

Second.—A chief at the head of a corps of local surgeons is essential, because no organization is complete without a head, the responsibility for results being centralized and the faithful and economic administration of any department demands it. With a competent chief, an employe gets the best results that medical science affords, and both employe and company, for many and obvious reasons, are benefitted thereby.

Third.—As an economic measure, the railway company and employe being honestly informed of the character and extent of an injury, the protection is mutual, and consequently mitigates the chances for a difference of opinion and resulting litigation.

Fourth.—The railway should always have supervision of the hospital, for two reasons: First, for its own protection in having a full and complete history or record of each case from a medical and surgical standpoint; second, efficient and conscientious service can only be exacted and demanded of actual employes.

Yours truly,

W. B. DODDRIDGE,
General Manager.

Mr. M. C. Kimberly, the General Superintendent of the Northern Pacific Railway, a very competent man and high railway authority, in answer to my inquiry, sends me the following reply:

ST. PAUL, MICH., April 7th, 1894.

CLARK BELL, ESQ., OFFICE OF MEDICO-LEGAL JOURNAL.

Dear Sir:—General Superintendent M. C. Kimberly has referred to me your letter of 2d inst., asking for information in reference to surgical service on the line of the Northern Pacific, with the request that I would reply to you direct.

The Northern Pacific has an organization in connection with its service, known as the Northern Pacific Beneficial Association. In this the employes and the Railroad Company are jointly interested and represented. Its organization includes a Board of Managers, ten of whom are elected by the employes, and eight appointed by the General Manager of the Railroad Company. These Managers elect the officers who conduct the business of the Association.

The Association has been in operation since September, 1882. Its revenue is derived from a fixed assessment from all officers and employes in the service of the railroad company. It takes charge of the entire medical and surgical service of the Railroad Company, furnishing surgical treatment in case of accident, as required, and also medical treatment for all acute illness originating during the period of service with the company. Exception is made for certain classes of complaints excluded from treatment.

For medical purposes the road is divided into two sections—Eastern and Western—having a chief surgeon over each section, with a corps of local surgeons located at the several principal stations. We have also two general hospitals for the eastern and western divisions, respectively, the former located at Brainerd, Minn., the latter at Missouli, Mont. These are under the immediate control and direction of the respective Chief Surgeons. The buildings and ground are the property of the railroad company, the use of same being furnished to the Association free of cost. The Association pays for all the operating expenses.

Our experience with the working of the Association has been fully satisfactory, both to the railroad company and the employees. The scheme is simple and it has been the purpose to avoid any elaborate insurance system. The benefits include medical and surgical attendance, either at the hospitals or at the homes of employees, and also an allowance for burial expenses. The assessments vary from 50 cents to \$2.00 per month, the former rate applying to all whose compensation is less than \$100.00 per month, and this embraces about 90 per cent. of the rolls.

Should you need any further information in reference to our system, I shall be pleased to furnish it, and supply you with our printed Constitution and By-Laws, and Report, if desired.

Yours truly,

H. W. KNAUFF,

Secretary of Northern Pacific Beneficial Association.

Believing that the experience of Chief Surgeons of railways would be of interest and value to railway managers, I submit the reply of a few.

J. F. Pritchard, Chief Surgeon of the Milwaukee, Lake Shore & Western, a gentlemen of high professional standing, makes a reply, from which I made a few extracts:

Manifestly the surgical, like the legal department, is a growth of necessity and not of choice. Just why there has been so much delay in organizing this relief is somewhat difficult to understand, as the experience of the past has shown the need, and all undertakings, whether civil or military, have recognized the medical and surgical professions as necessary to a safe and successful accomplishment of their purposes. Of a certainty railway managers have hesitated to face this question on account of the disagreeable features connected with it; for instance, unpleasant suits for personal injuries, and in some cases suits more or less unpleasant for compensation for surgical care of the injured.

In the attempt to solve this question have risen the many plans and so-called surgical systems on different railways, and all seem to now recognize the fact that it is a good business policy to care for men injured while in the line of their duty, or for passengers injured while riding on their train, although in neither case is there any legal responsibility for this care.

In a few cases have railway managers recognized the necessity of strict surgical superintendence, and these managers are certainly in advance of their fellows, for it must be that out of all this chaos order will come and we will have properly organized surgical departments.

It would seem that a surgical department was as much of a necessity, in fact a greater primary necessity, than the legal or claim department, for the reason that the more promptly and the more skillfully an injured person is cared for, the better results and lessened cost. There should be no delay in waiting for orders, but every surgeon in the employ of the company should go.

In order to reach efficiency in this direction it will be necessary to organize the department entirely independent of all others and reporting directly to the general manager or general superintendent, and this state of affairs will be reached when railway men recognize the fact that the surgical department is for other purposes than mere aids to the legal or claim departments in adjusting claims for personal injuries. Not but what this is an important part of the duty. It is certainly not a primary one, neither is it the most important.

An ideal surgical department, it would seem then, should be organized with a competent surgeon at its head. He should be a man of good business ability, as well as being a good surgeon, and should possess also considerable knowledge of railway business and methods. He should be given charge of the department fully and completely, as much so as any other department is held in charge by its head. His report should be made regular to his chief and an accurate and minute account kept of all matters connected with his department, he being always ready to furnish information and assistance to any other officer when called upon for such purpose.

His duties would include the appointment and discharge of his surgical staff. He should have contracts with hospitals so that at all times these would be convenient for the care of injured and cover no delay or hesitation. He should have charge of the physical examination of every man employed by the company, and authorized to reject all who were physically incompetent, or to so classify them as to render the service reasonably safe. While aware that, with the exception of color examination and an examination for other defects of sight and defects of hearing, this matter has not been considered by any railway company, yet it is a very important one and it would seem to need no argument.

I repeat again that the details of the direct operation of a surgical department should be adapted to the individual roads. But no road is so poor or so small that it can afford to ignore the surgeon. It would not be necessary in case of a road of limited mileage for the chief surgeon to spend all his time in railway work unless he be given charge of additional duties outside of the department; but on large systems he would require one or more assistants.

A surgical department organized on this general plan would be economical both of money and time of men, would not cost more for surgical assistants than many of the plans now in operation, would have salutary influence in bringing the employes and management nearer together, would increase the loyalty of the men and add to their efficiency. In fact, there can be but little said against and a great deal for a distinct surgical department.

W. B. Outten, M. D., Chief Surgeon of the Missouri Pacific System, ex-President of the National Association of Railway Surgeons, of the largest experience of any medical man in the world in the Railway Surgical Service, makes an extended reply, from which I make some extracts:

The Missouri Pacific System, since I have been its chief surgeon or connected with its service, has treated in its hospital department about 22,000 injured, without one cent's expense to the railway. The reason is that an assessment is made upon each employe for whose benefit the hospital system was introduced, which has created a fund ample to build the hospitals and supply medical and surgical attendance to all requiring it.

The assessments are made upon the following basis: All employes receiving \$50.00 and over a month are assessed 50 cents a month; all employes receiving under this sum, namely, \$50.00, 25 cents a month. This constitutes a fund, which, at the present time, varies between seventy-eight hundred and eight thousand dollars per month, thereby constituting a fund which is collected from off of these employes of nearly a hundred thousand dollars a year. This assessment is ample to take care of all injured and sick persons, pay the salaries of the surgeons in attendance, pay all local surgeon's bills, pay for the treatment and burial of injured passengers and employes. To give you a commensurate idea as regards the number treated, the St. Louis Hospital alone treats in the neighborhood of fifteen thousand people annually, the entire system treating in the neighborhood of twenty-five thousand people annually.

Now, then, there is no form of charity of which I am cognizant which can equal a hospital department, provided a just management permits it to be run upon a basis of usefulness and humanity. Thus, for instance, to show you its capabilities, all of the various specialties in medicines are employed by this department, there were last year over six thousand visits made to these specialists. We find no difficulty about getting the injured to come to the hospital of the system; in fact they come too freely. Now, then, what other advantages; is it to the railroad company, from a pure and cold business proposition, leaving out every element of humanity? In the first place, it saves every cent of money which, under certain circumstances, as in the settlement of claim, where doctors' bills are included—it saves all of these. Again, by its union with the claim department, it has enabled the railroad company to push compromise to its highest point, where it has become so efficient that law-suits are extremely rare. It would be some-what surprising, yet nevertheless true, that upon a system where between three and four thousand persons are injured annually, the greater bulk of which are employes, to point to a year in which the Missouri Pacific road was not sued by a single employe. Take in New York City, with the profuse and wonderful advantages enjoyed by corporations, where treatment can be obtained for nothing, yet, nevertheless, in the settlement of a case, owing to the fact of the free admissions of everyone to these injured persons, litigation is constant and very expensive; it is immaterial how cheap surgical treatment may be obtained, yet the results always indicate a good deal of expense. It has been found by experience that where railroad men are treated together in the same hospital that it is always an advantage in the shape of settlement. Complete and perfect information is obtained as regards time and every phase of the injured person's condition, so that immediate infor-

mation is supplied to the claim department, and a consecutive history given of every day in which the injured individual is in the hospital.

Should any official of any railway, who has not tried a surgical system, desire to get the exact status of the saving to the railroad company by a hospital department, there would be no difficulty in obtaining this point. In order to give an illustration, take, for instance, a record of this kind, as per the reports from the Relief Department of one of the most prominent American railways. 1,300 hundred claims were settled by that department, costing them nearly \$767,000.00. Now, upon the Missouri Pacific road, one year 4,300 claims were settled. These, including death losses, injuries to passengers and all others, aggregated, as per average, only \$14 a head. For years the average claim per capita has rarely run above \$36 per injured person. It will thus be seen that the Missouri Pacific road settled its claims, with three thousand more claims, with \$700,000.00 less than the railway to which I refer. It has always seemed strange that the railway managements of the country, with all their shrewdness and fine executive ability, cannot see the immense amount saved by having a Hospital Department and a Claim Department work in unison, and I make the assertion that any one who will take the time to investigate will find the truth of my assertion, that hundreds of thousands of dollars can be saved annually.

As regards the fact of assessing employees, they can make a Hospital Department so efficient that the employees will willingly maintain it. As for their striking, they would not be sustained, as over three hundred thousand employees are to-day assessed by various Hospital Departments and Relief Associations. Finally, to complete the comparison, the treatment of the injured upon a road which has a Hospital Department costs naught; aside from this fact, saves hundreds of thousands of dollars annually by supplying information, by aiding and assisting the Claim Department in compromise. The road on which there is no Hospital Department is simply placed in the hands of the outside world, and the expenditures in litigation are twenty times, nay, I might say, almost fifty times, in excess of what is paid by the road having a properly equipped hospital department.

W. B. OUTTEN,

Chief Surgeon Missouri Pacific Railway.

I have asked other prominent Railway Surgeons, and submit the replies of two—R. Harvey Reed, M. D., Surgical Editor *Railway Age*, and Consulting Surgeon to the Big Four System:

COLUMBUS, O., April 6th, 1894.

MR. CLARK BELL,

Dear Sir:—Yours of March 31st at hand, and, in reply, I beg leave to answer your questions as follows;

1st. The railways are benefited by an organized medical and surgical service by giving prompt relief to the injured employees and passengers. By affording this to the employees they save time and the consequent loss of money, whilst in the case of passengers they not only save the loss of time, but they save a great amount of money in the way of damages.

2d. I most earnestly recommend that a chief surgeon is not only essential, but an absolute necessity, to every railroad company of any considerable size. The only economical way to run a railroad is to have a head for each department, and it is certainly just as important to have a chief surgeon at the head of the surgical department as it is to have a master mechanic at the head of the mechanical department. Each one has his own duties, and should be experts in their line of duty. You might as well expect to fill a boiler shop with boiler makers, and expect to turn out the best of work without a head to the department, as to expect the local surgeons along the railroads to do the best surgical work without a head at that department.

3d. The most important benefit a railroad derives from a surgical service is the saving of money. The best method of organizing a surgical service is to secure a practical, competent chief surgeon with executive ability, and place the department in his charge, and make him responsible for it, and allow him to organize it on the hospital plan, and if this is done, he will serve the best interests of the railroad, its employees, and the general public.

I am aware that a large number of our American railways are still without any surgical service, and that many of the managers are exceedingly conservative on this question. Those who will hear my report as treasurer of the National Association at the Galveston meeting will receive some important statistics on this line, as we have gone to no little trouble and expense, in connection with the Railway Age Company, to secure these statistics, and show how the railways of this country stand in regard to the surgical service.

Very sincerely yours,

R. HARVEY REED,
Treasurer.

Surgeon George Chaffee, late President of the New York State Association of Railway Surgeons, makes the following replies to my questions:

I regard the establishment of a Railway Surgical Service as of the highest importance to a railway. It is important in many ways.

First. Humane and Scientific.

- a. Prompt medical and surgical aid.
- b. Chief and staff at command.
- c. Relief trains.
- d. Hospital System.
- e. Prevents criticism.

Second. Financial or Business.

- a. Economy.
- b. Protection.
- c. Differentiates between real and alleged injuries.
- d. Is an aid to compromise.
- e. Is self-supporting

I certainly do recommend a chief surgeon at the head of every Surgical Department. That officer is just as essential as the head of any other department.

Without a chief all is confusion, and the working of the entire department is without system.

A chief surgeon is the key to a surgical department, and, placed in the hands of his general manager, may unlock and explain many mysterious questions.

I favor a hospital system as a necessary adjunct to a completely equipped railway on the following basis:

a. The arrangement for the assessment of employes, and adoption of the system.

b. The selection of a competent chief surgeon.

c. The selection of competent local surgeons and specialists by the chief, and after personal visit only.

d. The establishment of the hospital system and relief car.

GEORGE CHAFFEE.

From all the replies that have come to me from conversations with superintendents and general managers of railways I submit the following resume of the benefits in an economical way that have resulted to those roads who have adopted a surgical system:

1. By far the greater number of injuries received in railway accidents are suffered by employes. These, irrespective of any question of company liability, as a matter of policy, should be treated, so far as surgical science goes, by the railway companies and without charge to the injured. When the railways have a hospital, they should be at once sent to the hospital and treated wholly without charge.

2. In all cases of railway injuries, it is to the interest of the railway company that the sufferers are treated by their own surgeons without cost to the injured, and the same as to hospital service. The practical working of this system is that it is a prevention against exaggeration of the injury and a safeguard against exorbitant claims.

3. In all cases it insures to the railway the careful examination of the case by a surgeon who is not unfriendly to the corporation, and prevents misrepresentation as to the nature, character, and extent of the injury.

4. When a hospital service is established by a railway, its practical working is of the most beneficial kind, both to the injured and the company, and no element is more conducive of honorable and just adjustments of claims, and no safeguard against false and fraudulent claims can be found better than a hospital system.

Many railways near large cities consider it unwise to expend moneys on railway hospitals, because those already constructed are adequate for the wants of the injured. From an economic standpoint this is not a correct view to take of the question. The expense of a hospital system as used on the Missouri Pacific or the Union Pacific railway company is in fact nil to the railway. Its benefits may be summarized:

(a.) The best service and appliances can be secured.

(b.) The reduction in the amount of claims is something marvelous and wholly and inexplicable except by actual investigation.

(c.) It is an effectual safeguard against trumped up claims by speculative attorneys and hospital surgeons, who combine with counsel against corporations.

(d.) It insures the injured the best, most effective, and immediate service and relief, oftentimes of highest value to the injured, and is valuable as a means of cure.

(e.) And in practice the hospital system sustained by the men themselves is always regarded by them as their own, and develops into a strong institution for all employes, which makes it universally popular with the men.

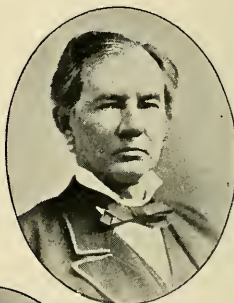
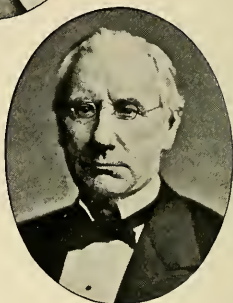
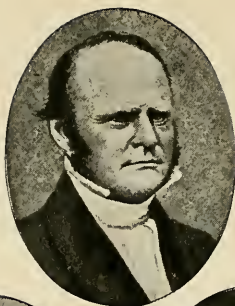
As a consensus of opinion I make the following deductions for the judgment of railway managers:

1. That a surgical system, under the charge of a chief surgeon, who has full charge of its work, responsible directly to the general manager of a railway and who acts in accord with the officers who adjust all claims for damages, is greatly

to the interest of railways, as an economic measure, and in its practical operation results in a very large reduction in the aggregate of sums the road would otherwise pay for losses to those injured on its railway.

2. That the surgical service by the local surgeons should be under the supervision and control of the chief surgeon and should be confined strictly to the care and treatment of the injured only.

3. That the best interests of the railway companies, the injured, and the public would be subserved by the establishment of a hospital system on all the great lines, under the charge of the chief surgeons of the roads.



CHIEF JUSTICES SUPREME COURT OF PENNA.

HON. WALTER LOWRIE,
1859-1863.

HON. GEO. W. WOODWARD,
1863-1867.

HON. JAMES THOMPSON,
1867-1872.

HON. JNO. M. READ,
1872-1873.

DANIEL AGNEW,
1873-1878.

HON. GEO. SHARSWOOD,
1878-1883.

HON. ULYSSE MERCUR,
1883-1887.

HON. ISAAC G. GORDON
1887-1889.

HON. EDWARD PAXSON,
1889-1893.

HON. JAS. P. STERRETT,
1893—

RAILWAY SPINE.*

BY CLARK BELL, ESQ., VICE-CHAIRMAN AND SECRETARY OF THE
SECTION OF RAILWAY SURGERY.

Railway spine is the Nemesis of the modern railway. It is the veritable Old Man of the Sea, that sits on the shoulders and is an ever-present, ever-to-be-dreaded terror to railway commerce and railway managers. Invented by one of the most clever English surgeons as a means of procuring enormous verdicts from railway corporations in accident cases, it has baffled both railway surgeons and counsel, and, vampire-like, sucked more of the blood of corporate bodies and railway companies than all other cases combined. It is the ready refuge of the malingerer, the weapon always burnished bright and sharpened, of the unscrupulous attorney and his partner in profit, the medical expert, and affords advantages for the scheming, avaricious claimant who has suffered an actual injury unparalleled by any other cause of injury known in railway damage cases.

Like the philosopher's stone, that transmuted all metals into gold, it possesses the magic charm and power of absorbing and transforming all injuries into "concussion of the spine." It may be likened to a glass that has the rare faculty of distorting and even magnifying every class of railway injury, so as to make it seem abnormally great to juries and courts. It never reproduces true to nature, but ever magnifies, so that simple injuries take on in its reflection the

*Read before National Association of Railway Surgeons May, 1894.
Read before Medico-Legal Society, June 3, 1894.

guise of grave disorders. Unknown before the era of steam, it is a plant sprouted on English soil, which has exhibited phenomenal growth in its infancy, has developed in the last half of the present century into a tree that, like the banyan, has sent out branches that have taken root in the soil of all countries where civilization has carried her standards, marching with the progress of the race, keeping step with the railway as it extended its arms and lines for human development, and opening the treasures of a new world. Unknown absolutely among savages, not found away from railways, it has been an incubus and almost a parasite upon that magnificent growth, "the modern railway," which has, like the ivy on the oak, nearly strangled the trunk by its contaminating embrace. Its growth has been as marvellous as its exactions have been enormous.

Avarice and greed have been the rain and dew that have, like Tupper's fragrant blossoms, watered it morn and even, and it has withal kept a face and mien so near to truth, so plausible to the eye and the reason, that we oftentimes think it has almost stolen the livery of heaven wherewith to serve the dark prince. It is the most elastic in definition, the most elusive in description, and the most absorbing of all the various injuries resulting from railway accidents that can be imagined or known to counsel.

See the definition of its inventor, Erichsen :

Concussion of the spine is a certain state of the spinal cord occasioned by external violence, a state that is independent of and usually, but not necessarily, uncomplicated by external lesion of the vertebral column.

Can anything be more elastic than that? Anything more elusive, more incomprehensive?

Is there any class of injury over which such a broad mantle as this could not be successfully thrown? Beneath its voluminous folds are all the Psychoses, traumatic or others, all the neuroses, general, local, and that without ref-

erence to their prior origin or cause. Consider how this clever artist, Erichsen, evades even the semblance of a definition. What he does is to speak of the state of the cord, which he skilfully does not attempt to either define or describe. It lacks every element of a definition. It is simply an admirably clever statement, in the most general language, so artistically drawn as to evade defining or describing the state in any way that would limit its application, and using such broad and comprehensive terms as would include every known injury, the effect of which gave symptoms similar to those due to actual injuries of the spine.

Has not the time come when the profession of surgery should define this injury so that courts, counsel, and juries may know and locate and apply to it those tests which are insisted upon in regard to all other physical injuries? It should be brought out of the shadow into the sun, out of the darkness into the light, out of the mysterious into the actual—the real. I call upon the surgeons of the National Association of Railway Surgeons, in the name of the judges and of the bar, to frame a correct definition of this disease, if it exists, and to so describe and characterize it with precision that not only judges and lawyers may know what it is with certainty, but that the average jurymen shall be able to do so.

How many million dollars in the past have railway corporations paid, unjustly and improperly, upon the verdict of juries, given under the forms of law, where courts, counsel, and the public know and realize that it was subversive of justice and might be fairly characterized as legalized larceny or judicial robbery? How many more millions must follow in the same channel before a halt is called? Where lies the responsibility for the existing state of things in this regard? How can it be remedied or corrected? To my mind the responsibility rests now greatly upon the railway surgeon

and certainly the National Association of Railway Surgeons has no greater or more important problem confronting it than this.

I have studied with deepest interest and attention the admirable papers read before that body at Omaha in 1893 by Surgeons George Ross, of Virginia ; J. N. Jackson, of Missouri ; A. P. Grinnell, of Vermont ; Thos. H. Manley, of New York ; Samuel C. Benedict, of Georgia ; A. J. Mullen, Jr., of Michigan City, Ind. ; W. B. Outten, of St. Louis, and George Chaffee, of Brooklyn, and the discussion those papers evoked at that session. I observe that before this body the discussion is divided into two classes—those without fracture of the spine and those with. I am inclined to think the concurrence of surgical thought at this moment is substantially in accord with the views expressed by Dr. T. H. Manley, that if fracture is absent, the existence of serious injury to the spinal cord is so rare and uncommon as to be practically out of the question, out of the account.

Let us be critical, honest, and truthful. Is there any “state of the spinal cord occasioned by external violence that is usually or ever uncomplicated by external lesion of the vertebral column?” Mark the words “uncomplicated by.”

I address that class of surgeons who constantly deal with railway injuries and have superior sources of information. Have you ever seen such a case? Do you know what the post-mortem observations of such a case would indicate? Is it anywhere described in the literature of railway surgery?

The prior history and exact mental state at the moment of the accident must be known and studied before we can accept the opposite conclusions in cases like the interesting ones cited by Dr. Murphy at Omaha. Excluding the phenomenal cases of conductor or engineer, who suffer in some remarkable instances, where the brain as well as the spinal

cord are involved by their life on moving trains, which hardly, for a wonder, come fairly under the Erichsen definition, I asked recently that justly celebrated surgeon, Joseph Jones, at New Orleans, if he had ever seen or known of a case where such a condition existed, uncomplicated by external lesion of the vertebral column. He replied: "No; I do not think such a case has ever existed." To resume the criticism of the Erichsen definition, the language "but not necessarily uncomplicated by external lesion of the vertebral column." An actual lesion of the vertebral column should more or less affect the spinal cord.

What shall be said of these enormous verdicts rendered in the past by juries in this class of cases who have been misled by the claims of speculative lawyers and surgeons, who have divided with their clients the sums wrongfully taken from railways in this class of injuries?

Were they wrong? All thoughtful minds knew they were wrong. Is it a total loss? No, it is not. If it serves as beacons to warn those who are to follow, of the pitfalls and dangers of the course, and if by this service good comes and light and the beginning of a new era when we shall be emancipated from the thralldom of the past, then these very losses may by their magnitude, their injustice, and the general judgment of all honorable minds, be the very lever which will work the revolution, the end of which is emancipation of the race from this enormous evil.

Why should the railway surgeons of the nation hesitate in forming such a consensus of surgical thought as would present an insurmountable barrier to the further spread and advancement of an everywhere recognized evil? It is quite as notorious as the cunningly devised plea of insanity when interposed to save a man from punishment, who is instructed how to simulate insanity.

How can this great army of surgeons, united for a common purpose, bound by every consideration of honor and duty so far as lies in their power to avert any great danger that assails the man who travels or the railway who carries ; how can they best, by united action, erect barriers and establish rules, limitations, and define injuries to the spinal cord, actual and imaginary, which will be just to those injured and protect the railway from robbery by the unprincipled ?

These are the questions which now concern the future of railways and their management and which will be among those to be considered by the section on railway surgery of the Medico-Legal Society. That section combines the skill and learning of the railway surgeon, the legal training of the counsel and the business ability of the railway manager, all of whom are on the roll of its membership. The questions involve legal principles and surgical science, and call for the ablest and profoundest study by the great names in surgical science, conspicuous upon the roll of your body. I can but regard this brief paper only as an introduction of the subject for your consideration and study, and invite from each of you during the next year your thought and judgment to help in an elucidation of the best means of limiting an evil so formidable and disastrous as this has grown to be.

1. DR. JAMES R. COCKE.
2. DR. ELOISE I. CHURCH.
3. MILES M. DAWSON, ESQ.
4. DR. GEO. FREDERICK LAIDLAW.
5. SOPHIA MCCLELLAND.

6. DR. CARLETON SIMON.
7. MR. ALBERT BACH.
8. DR. A. LEONORA WHITE.
9. DR. ISAAC N. QUIMBY.
10. MRS. JACOB F. MILLER.

KEY TO GROUP.

11. MRS. LOUISA TUTTLE.
12. MRS. ALBERT BACH.
- 13.
14. MR. CLARK BELL.
15. DR. G. STANLEY HEFT.

16. REV. A BROWN BLACKWELL.
17. HON. JACOB F. MILLER.
18. MRS. CAROLINE J. TAYLOR.
19. REV. PHERE A. HANAFORD.



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THE COMMITTEE ON HYPNOTISM OF THE PSYCHOLOGICAL SECTION, MARCH 4, 1897.

KEY TO GROUP ON BACK.

OPENING ADDRESS OF CLARK BELL, ESQ.,
VICE-CHAIRMAN PSYCHOLOGICAL
SECTION.*

Fellows of the Psychological Section of the Medico-Legal Society :

The absence of Prof. Elliott Coues, Chairman of the Psychological Section, makes it my duty to open its work for the coming season, and I bid you a hearty greeting and welcome after our vacation. I must not detain you, but only open to you the outlines of labor that lie in the immediate path of our present duty.

The work of this Psychological Section is one of the most attractive and interesting that can engage the scientific inquirer. Mr. B. O. Flower, the talented and versatile editor of the *Arena*, well says in his opening paper for this month, from which I quote the opening sentence :

To ascertain the truth has ever been the most alluring pursuit of earth's noblest minds.

And from its closing lines :

For the love of truth, for her own sake, for the dispelling of the superstition which recedes where the darkness of Ignorance abides ; for the better understanding of human nature and for the light which may come to us affecting the destiny of the human soul, we are bound by our loyalty to truth and the sacred obligation of duty to investigate persistently, patiently, sympathetically, and yet critically this new continent of knowledge which opens before the human brain.

In a section composed as this is—of such a combination of scientific inquirers, embracing men and women of all creeds, marshaled under the broad banner of critical scien-

* Pronounced, October 10th, 1894, before the Psychological Section, Medico-Legal Society.

tific endeavor—we can well afford to take as our motto, “Try all things and hold fast those which are good.”

We have among us those learned in the lore of the Hebrews and the Eastern nations, those of all shades of Christian thought; the agnostic, the Deist, the free thinker, the pantheist, and, if I mistake not, even the Atheist, but all are inspired and agreed upon this cardinal principle, the scientific value and importance of adherence to the truth, under all circumstances and conditions.

Our field of inquiry is the wide domain of psychological study. We are students of the whole field of neurology, psychiatry, and their cognate branches; insanity and the insane; criminality and the criminal; penology and legal responsibility of the insane for acts called criminal; telepathy; hypnotism; clairvoyance; even the question, now of such commanding interest, of the immortality of the human soul; and the relation of those who have dwelt among us and have stepped behind that screen which we call death, opaque to our vision by limitations we do not understand.

The mental horizon of man has marvelously widened and broadened in this nineteenth century now closing. We aim to throw off the superstitions of the past, inherited as mental legacies. We hope to be able to investigate with courage, and that we shall be willing to follow the light of truth, no matter where it may lead.

The hour is past when any thoughtful mind should be afraid of the truth. But we must not mistake the false light for the true. The great Hugo said:

The strict duty of science is to test all phenomena.

Science should verify and distinguish.

The mission of science is to study and sound everything.

Last Sunday I heard one of the most eloquent of our divines in the metropolis quote some great words that one of our most talented and trusted educators believes had

come to him from an intelligence outside of this life and from beyond :

I come in ye name of The Light of ye world, in whom ye distant is drawn near, and before whose presence darkness and sorrow and sighing have fled away. Let ye joys of earth become to you, but ye shadows of ye true ; lay down your earthly cares, look up to ye pure light, ye source of perfectness and peace ; and its beams shall kindle in your hearts ye love of God, in whose presence and blessing you shall forever rest.

To you shall be granted a foretaste of ye reward of those who love with singleness of heart ; you shall conceive of sweet delights who absorb and transport ye spirit—freed from ye burden of ye flesh—whose desires are fixed on things eternal. So shall God shew you Himself, and all things in Himself. He will dispel all darkness and ignorance and imperfection, and shall bring you out of ye uncertainty of hopes and questionings into ye desire and love and light of wisdom. There, in ye Celestial light, all joy, all happiness is found. Out of His treasury are shed forth heavenly blessings for ye portion of all those who will open their hearts to receive ye gift of His love, and to rejoice in ye blessings of ye Mighty God. They shall be abundantly satisfied with the plenteousness of His House, and He shall make them to drink of His pleasures as of a river. O, Lord of Hosts ! Blessed is the man ye trusteth in Thee.

We are to fearlessly investigate the phenomena of psychological research and experimental psychology ; to look for the truth, and should not be intimidated by either mockery, the clamor of ignorance, nor the present known limitations of human knowledge.

We do not and cannot give undue prominence to the study called psychical research. It forces itself upon attention, and we prefer to investigate it by the light of science rather than to dismiss it with a sneer. The great Hugo also said :

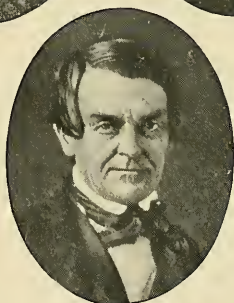
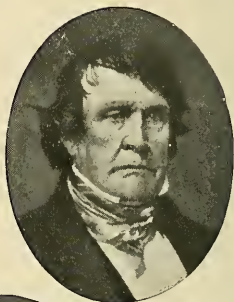
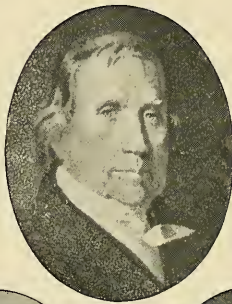
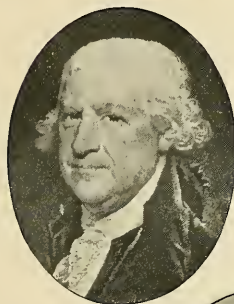
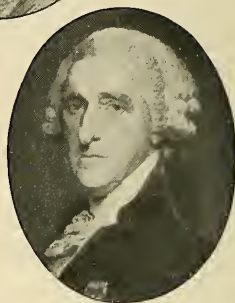
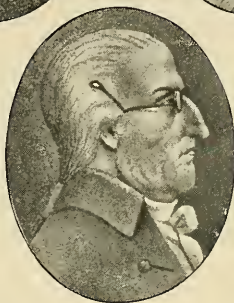
Science is ignorant and has no right to laugh ; a *savant* who laughs at the possible is very near being an idiot.

This is the first occasion when the Section has met in joint session with the Medico-Legal Society. All members of the parent society, who take an interest in psychological studies, should unite with this section. The plan and basis of our work is to organize standing committees on each branch or subdivision of our fields of study.

We invite all to indicate to our officers that branch most

interesting to them, so that proper classification of labor in committees can be made.

The last number of the Bulletin of the Psychological Section has been sent as a sample copy to all the members of the Medico-Legal Society, to influence all who take an interest in this department of scientific enquiry to unite with the section and aid in its work. Every member of the society, whether active, corresponding, or honorary, is eligible. The section dues are \$1.50 per annum, which entitles the member to the Bulletin free. A list of the present members of the section will appear in the next number of the Bulletin of the Psychological Section.



CHIEF JUSTICES SUPREME COURT OF PA.

HON. ISAAC NORRIS,
1731-1731.

HON. JAMES LOGAN,
1731-1739.

HON. WM. ALLEN,
1750-1774.

HON. BENJ. CHEW,
1774-1777.

HON. THOS. MCKEAN,
1777-1799.

HON. EDWARD SHIPPEN, 2d,
1799-1806.

HON. WM. TILGHAM,
1806-1827.

HON. JOHN B. GIBSON,
1827-1851.

HON. JEREMIAH S. BLACK,
1851-1854.

HON. ELLIS LEWIS,
1854-1857.

THE MEDICAL JURISPRUDENCE OF INSANITY.

HOSPITALS FOR THE INSANE AND THEIR TREATMENT.*

BY CLARK BELL, ESQ., HONORARY MEMBER BELGIUM SOCIETY OF
MENTAL MEDICINE, HONORARY MEMBER OF THE MEDICO-
LEGAL SOCIETY OF FRANCE.

In no way can we form better conclusions as to the state of civilization and culture of a people than by a careful study of their hospitals for the care of their insane and dependent classes, and their methods of care and treatment of the inmates.

Insanity is doubtless one of the direct fruits of civilization, as it is very rare among savages and uncivilized races.

The nineteenth century has witnessed phenomenal changes in the care and treatment of the insane in all Continental Europe, the British Islands, in the American States and Canadian Provinces.

Since 1834 there has been a steady, harmonious growth in public sentiment everywhere on the North American Continent in favor of building splendid structures, at enormous and sometimes lavish cost, in the various States and Provinces of North America, and the result has been to gradually improve the actual mental state and condition of the insane, so far as hospital treatment is concerned.

*Read before the Psychological Section of the Medico-Legal Society, November 12, 1894. Read before the Medico-Legal Society, December meeting, 1894.

The amounts thus expended in the American States and the Dominion of Canada reaches many millions of dollars, and the public have freely and cheerfully devoted enormous sums for this purpose.

AMERICAN ALIENISTS.

The Medico-Psychological Association is composed of the Medical Superintendents of these hospitals for the insane, public and private, assistant physicians therein, and alienists, who have devoted their lives to the subjects directly connected with insanity and the care and treatment of the insane.

This society may fairly be regarded as a body of medical men, who, by practical experience and contact with the insane, their care and treatment and the management of the hospitals of the country, are qualified, entirely competent, and entitled to speak upon the involved questions respecting the best methods of management of the hospitals, and the care of the inmates.

They are in all the States and Provinces, as individuals, relied upon by the courts as expert alienists, and engaged as witnesses in criminal trials where insanity is pleaded or is the subject of judicial inquiry, and it may be fairly said that they, as a body, have the confidence of public officials and the community ingeneral within their sphere, with unimportant exceptions. We also have standing almost in a *quasi* antagonistic relation to the Hospital Superintendent in the medical profession a smaller class of specialists who, make the study of nervous and mental disease their principal life work, known as neurologists, some of whom are classed as alienists, and who make it part of their profession to be called as expert witnesses in criminal trials.

Some of the latter, in a few cases, have had asylum experience and actual contact with the insane, but this is rare,

and those who are prominent as expert witnesses of this class are, as a rule, wholly without practical knowledge of the insane in institutions, and entirely unfamiliar with the details of the government and management of the insane in hospitals, aside from occasional visits of inspection, and such general information as the public in general possesses. Their studies regarding the insane are more theoretical than practical, but many of them have attained national reputations as neurologists, and some aspire to be and are properly classed as alienists.

DR. S. WEIR MITCHELL.

Among American neurologists none holds a higher position than Dr. S. Weir Mitchell, of Philadelphia. It was due to these considerations that Dr. Mitchell was invited to deliver the semi-centennial address to this Association at the end of its fiftieth year of labor, an invitation that he at first declined, because he was unwilling to speak except free to condemn that which he did not approve in hospital concerns, but this refusal was not accepted, and his criticism was sought rather than avoided by the Association officers, and in May, 1894, at the Philadelphia meeting, Dr. Mitchell made an address, the publication of which has attracted the greatest public interest, as well in lay as in professional circles.

Dr. Mitchell's paper may be characterized as an indictment of the whole system of asylum or hospital management, and to sustain his assault he has called and cited the views of some of the more prominent neurologists of the Middle and Eastern States, also including Prof. Eskridge, formerly of Pennsylvania, now at Denver, Col., and Prof. Henry M. Lyman, of Chicago.

He combats the idea that the insane should be treated only by the specialist familiar by contact with the care and treatment of the insane. He denounces the system of

Boards selecting Superintendents, and especially the Boards of Managers and the duties they perform, and claims that there has been no real progress in the management and work of the hospitals, at all commensurate with the general progress of science in other directions, and he especially assails the alleged introduction of political, partisan politics into the selection and composition of Boards of Control, as well as the selection of the Superintendents, and the displacement of experienced and able men who had devoted the best of their lives to this labor, by others, for political reasons.

There has ever been a tendency, in the popular mind, echoed in the public press, to distrust the conduct of our great asylums, both as to Boards and physicians, and the investigation of the largest system of all, that of the insane committed to the charge of the authorities of the City of New York, to which public attention had been called by the *New York Herald* as to alleged abuses, which had greatly excited the public mind in this respect in that city, which excitement had extended to other cities of the American Union.

The arraignment of the whole system, by so eminent a man as Dr. S. Weir Mitchell, at this particular moment, was complicated by this excited state of the public mind, and it cannot be disguised that the effect was prejudicial, not only to our system of hospital management upon the whole North American Continent, but to the medical men in charge of the great public institutions for the insane everywhere.

SUPERINTENDENTS OF ASYLUMS.

It was in view of this peculiar condition of things that I decided to ask some of the leading Superintendents of State and other hospitals, for a brief expression of their views on some of the questions involved, and with this end in view, I sent out a circular letter of inquiry, of which the following is a copy :

MEDICO-LEGAL JOURNAL, OFFICE OF THE EDITOR,
NO. 57 BROADWAY,

NEW YORK, October 10, 1894.

My Dear Sir: The arraignment of the management of the insane in American hospitals by Dr. S. Weir Mitchell, and some of the leading neurologists of the Eastern and Middle States, in an address before the Medico-Psychological Society at its last meeting, presents questions of great public interest and importance to Hospital Superintendents as well as the general public. While few of the neurologists have had asylum experience, and but few any extensive knowledge of general asylum management outside of six or seven States, there was a unanimity of expression that it was not as good as it should be, and that political interference with the appointment and removal of Superintendents of hospitals for the insane was the acknowledged cause of many of the evils complained of. This would undoubtedly be your opinion, but the distinguished and eminent neurologist made other criticisms in his able address which command attention, upon some of which I ask your opinion, in as brief a form as you can give it, for use in this journal, in discussion of the subject.

I. Would it be better for the insane in a hospital if its physician had nothing to do with the financial or business management, and would you favor such a change?

II. Should the physician in charge of a State hospital for the insane be appointed by its Board of Managers, or how could the best service in such institution be otherwise secured?

III. Should advanced scientific psychological and pathological studies and treatment be employed by the medical staff of a hospital for the insane and enforced by law?

IV. How far can the inmates of an asylum be judiciously employed beneficially to themselves, and how can all the insane (except those physically incapacitated) best obtain the benefit of employment?

An early reply will greatly oblige.

Faithfully yours,

CLARK BELL.

From among a large number of replies I select such as I have space for within the limits of this paper and discussion, which I give in the appendix.

MANAGEMENT OF FOREIGN HOSPITALS FOR INSANE.

It may be proper, upon the subject of the powers of the Medical Superintendent over the business and financial administrations of hospitals for the insane, to allude to what I found to be the system in Belgium, which compares favorably with any in the world that I have visited, which only em-

brace, besides ours, those of Great Britain and France, my knowledge of other continental asylums being such as has been acquired by studies and correspondence with Superintendents throughout the world.

In Belgium the Medical Superintendent has nothing whatever to do with the financial, business, or administrative part of the institution. He acts only as physician to the inmates.

A contract is made in all the great hospitals with the Brothers of Charity, by which they agree to take the entire charge of the care, maintenance, clothing, and support of all the inmates at the price (when I was there) of 96 centimes per diem, a trifle under one franc, or not quite 20 cents per day. That covers everything except medical attendance. Two of these brothers were in each ward. All kinds of industries were carried on in the asylum. One brother was a farmer and was at the head of the culture of all the crops grown, with a large body of the inmates working with and under him. One was a tailor, and he had a shop full of patients. One a carpenter. One a worker in iron. One in brass. One a butcher. One a brewer, and they made their own beer for all the inmates, to all of whom it was served. One a shoemaker. One a worker in ornamental wood. One a cook, having charge of the kitchen. One a florist or gardner, who grew and kept beautiful flowers, plants, and shrubs, with which the whole hospital was, in all cases where I visited, decorated and adorned, and in all, the inmates were in large numbers successfully employed. I speak especially of the Hospice Guislain at Ghent, in charge of my old friend, Dr. Jules Morel, the Medical Superintendent, Ex-President of the Society of Mental Medicine of Belgium, and now its Secretary and Treasurer, and editor of the Bulletin of that body, as well as that at Tournai, in charge of Dr. Lentz.

Dr. A. E. McDonald, for so many years in charge of the

insane of this city, having often over 6,000 insane under his charge at a time, has always claimed to me that employment was of the greatest value and aid, both as a curative and as a sedative, and also in control.

He has shown me a man with a pick-axe, digging at an earth bank, which he said was the most efficient possible way of working off undue excitement and violence of feeling, and I think all superintendents of asylums recognize the importance, utility, and value of employment of the insane as a curative, as well as a sanitary and economical aid in their care, cure, and management.

When hospitals are in the country, away from the great cities, so that employment can be given to laborers in the field, this is universally found to be of great value, and the difficulty has more frequently been, so far as my observation goes, to find suitable employment for all who could be employed. The example cited by Dr. Mitchell at Wernersville, Pa., is an object lesson of wonderful value. It should be studied not only by superintendents of hospitals, but by boards, and managers of asylums for the insane everywhere, as its teachings are of enormous value, both to the philanthropist and the economist.

PATHOLOGICAL AND PHYSIOLOGICAL STUDIES.

As to scientific pathological, physiological studies there can be no doubt of both the importance and value of these aids as an abstract question, but how can this be secured practically in many of the States and provinces too weak in money and force upon the staff to secure it?

All would agree that its importance and utility must be measured by the highest grade of excellence.

An inferior service in this regard would not be at all desirable. In the greater States, like New York, Pennsylvania, Ohio, and even Massachusetts, one laboratory and a skilled

pathologist that could benefit and be used by all might be of enormous good, but how could such a plan help the smaller and weaker States ?

The action of the London County Council grappling with this identical question, at a recent meeting, is very interesting. They interrogated the Superintendents of the four great London County asylums : Banstead, Cane Hill, Colney Hatch, and Hanwell.

The question was whether a pathologist should be appointed for each asylum, or whether one or more should be appointed in such a way that their services should be rendered for all.

Upon the report of their sub-committee a resolution was adopted last month to appoint a capable pathologist for the benefit of all, at a salary of £700 per annum, which will secure a superior man for the work.

The assistant medical officers are usually quite competent to conduct the ordinary *post mortems* and much of the pathological and physiological work, but beyond this there is a wide field of profitable research into the pathology of insanity and the rich and unexplored field of the minute anatomy of the brain, which requires especial training, skill, and mechanical aids, which research, now in its infancy in America, will, I trust, in the near future, and through this means, be, by the aid of the Superintendents of asylums, the royal road to scientific knowledge of the highest good.

Dr. Conolly Norman, President of the British Medico-Psychological Association, last June, in his Presidential address, alluded to the increasing interest in pathological work in British asylums, and in high praise of what he termed the great pathological schools of the asylums of Wakefield and Morning Side.

He says :

• No medical officer should be permanently appointed to an assistantcy

who had not, within a limited period of probationary service, passed a special examination in psychiatry.

Also, that :

No step should be given to an asylum officer who had not passed an examination entitling him to promotion.

The British Medico-Psychological Association has established on a firm and permanent basis its system of certificates of qualification in mental disease.

Its action on chemical instruction in mental diseases has, in my opinion, been the means of engrafting that idea upon the curriculum of study in all the British medical schools, and this is also Dr. Conolly Norman's opinion.

Is there not proper food for reflection for the American Society in these respects as well as in the school for training nurses, to which Dr. Cowles and others of American Superintendents have given so much attention ?

Is not the experiment at Alt Scherbitz, now nearly eighteen years old, of an entire change from the great institution to groups of entirely detached houses, each with its own grounds and garden, and its small family under the eye of the physician everywhere, acknowledged abroad as an advance, and generally followed in the new structures in Germany, entitled to the thoughtful study of all Superintendents of asylums, and to the board of control and management ?

The overflow colony at Lierneux from Ghent, in Belgium, on a plant of 2,500 acres of land, surrounds the village of that name, and about one person to the acre, or 2,500 in all, of whom about 350 are insane, under this family system, grouping about seventeen hamlets around the central village of Lierneux. This, based on the plan of Ghent, and managed in the same manner, is completely successful.

The family care experiments at Dalldorf, in Germany, near Berlin, only now eight years in trial, have been so re-

markably successful that we cannot ignore the results and must consider them.

POLITICAL INFLUENCE.

A word as to political influences in the choice of boards, and especially of medical superintendents of hospitals. Under our system of government it is simply impossible to entirely divorce hospital management from political considerations. We may discuss it, we may deplore it, but we can not avoid it. I am inclined to think, that if we look it squarely in the face, much of its alleged viciousness will disappear. There are only occasional genuine causes of complaint, as it seems to me.

There has been no change in the head of the medical department in this city for more than a score of years. I recall no case in this State where such a change has been made that could have been fairly made the subject of criticism. I do not think it has occurred in the great State of Pennsylvania. I have thought that such a change in one of our New York asylums would have been decidedly for the better, but death, and not the boards, remedied the evil. I know that such changes have been made in perhaps half a dozen States, alleged to be due to political considerations; and I think I know of some, clearly so made, as is always done by the political parties in public offices; but in these cases, even the most extreme, was it always an un-mixed evil?

Take it all in all, and as a system, speaking of the whole of the institutions for the insane in the American States and the Canadas, it seems to me that there has been a greater ratio of permanency and continuity of service of superintendents of asylums, than in any other class of public officials. And I think a careful examination of the records of the past twenty years will strongly support this assertion. We must not *

lightly, or without just cause or reasonable grounds, impair the public confidence in our State institutions.

Legitimate criticism is beneficial, healthy, needful, and productive of good. Organized, systematic, thorough inspection and criticism is indispensable, just, necessary, and proper. This is, or should be, the mission of the State Board of Lunacy Commissioners in the several States, whose duties should be clearly defined and most exacting, but whose powers should be, as in England, purely advisory and never executive.

If the criticism of Dr. Mitchell and his confrères serve to call attention to existing evils, to arouse superintendents to higher efforts, nobler aims, or mitigate in any degree the condition of that class, who, as the Earl of Shaftesbury said, were the most unfortunate because the most helpless of our race, then there will be abundant *raison d'être* for the attacks, but, on the other hand, I should deplore it, if we find as a result that the confidence of the masses of our people in the efficacy and integrity of our system of hospital treatment of the insane had been injured, or their utility and usefulness disturbed, weakened, or otherwise impaired.

APPENDIX.

STATE HOSPITAL FOR THE INSANE.

WARREN, Pa., October 2, 1894.

MR. CLARK BELL:

Dear Sir:—I have no desire to express any opinion in regard to Dr. S. Weir Mitchell's address, which I heard at the time of its delivery, further than to state that the views have been expressed by him for the last twenty-five years. Those views show an entire want of familiarity with all the details of hospital management, as directed by the physician-in-chief and superintendent; in the discipline required to be exercised with those employed in the various departments of the hospital, particularly in the care of the inmates; in the medical, moral, and dietetic treatment of the patients and in the direction and management of the diversion, amusement, and occupation of various kinds for the inmates, on the great physiological principle that the mind must be engaged in some proper manner while treatment is administered for the bodily ailments.

Another matter entirely overlooked is that the physician-in-chief and superintendent must have some diversion, or change of thought, from the unceasing demands for medical direction, by engaging, for a few hours each day, in some duties about the hospital which have immediate direction towards the welfare of the patients, on the principle acknowledged and acted on by every intelligent man, that, confined to one fixed course of thought, a man becomes a routinist, contracted in his views, whereas, with diversion, his mind is broadened, and he is able to devise and execute better for those entrusted to his charge.

The pressure of duties, in the charge of so large a hospital as this will not allow time, at this particular season, to write an article on the subjects mentioned by you, and, therefore, I must decline to attempt such writing.

Very respectfully yours,

JOHN CURWEN, M. D., Superintendent.

THE ALIENIST AND NEUROLOGIST.

ST. LOUIS, MO., Sept. 28, 1894.

CLARK BELL, ESQ., New York City :

Dear Sir:—In reply to your queries of the 26th inst.:

I. The superintendent should have general advisory control, but should do no work in detail himself, i. e., non medical. This is the rule under the present system, the financial or business management being performed by steward and treasurer, under general direction of the Board of Managers, the hospital by-laws, and the State law. Everything about a hospital for the insane may have either a good or a bad therapeutic influence. The architecture and site of the building, the plan and condition of the grounds, the table service, the attendants and nurses, the pleasure grounds, amusements, and labor arrangements, the farm, the garden, the laundry, the sewing room, the exercise grounds, the temper, disposition, and intelligence of nurses, the *personnel*, culture, and temperament of the physicians, other officers, and employes—all influence for good or ill the welfare of minds diseased with which they are brought in contact. The size of the window transoms and the character of the locks, whether they are sprung and opened with knob or key, the location and construction of stairs, are matters of medical concern, as much so as ornamental window guards and pleasing landscapes. Even the fish pond, apiary, the music, the gymnasium, the ten-pin alley, and the conservatory are matters medical in a certain sense known to expert psychiatrists in the successful management and care of mental aberration, because they may retard or promote the recovery of patients. The literature to which patients have access, the letters they read, and the visitors they see may serve to promote or retard their recovery. In short, everything about such an institution has more or less of therapeutic significance, hence the medical head, while relieved of burdensome detail care, by ample subordinate help and co-operating management, should have a directing influence over everything connected with these institutions. He should be the chief executive officer, subject only to the by-laws, and the control of directors and the law, and should be given much directory discretion, without the burden of great detail work. He should be untrammelled in the prescribing of anything that might promise to promote the welfare of

the patients. He should certainly be consulted by the architect in the construction of all buildings.

II. It matters not how appointed, if for qualification and long tenure.

III. Of course every hospital for the insane should have a pathologist and pathological laboratory, and all facilities for the best diagnostic and clinical methods.

IV. About 60 per cent. in the line of their best automatic aptitude, which is generally their ordinary calling or occupation, if no delusion is connected therewith.

Yours truly,

C. H. HUGHES, M. D.

MARYLAND HOSPITAL FOR THE INSANE, SPRING GROVE,
CATONSVILLE, Baltimore Co., Md., October 10, 1894.

HON. CLARK BELL, EDITOR MEDICO-LEGAL JOURNAL:

Dear Sir:—I am not one of those, (if there be any such), who believe that the management of insane hospitals, in this or any other country, is as good as it can be made. I believe there is considerable room for improvement. I don't believe there is much more room for improvement with us than there is abroad. Excepting the clinical work done in the Paris hospitals by such men as Magnan, Sollier, Bourneville, the Voisins, Seglas, and a few others, and similar work by the German, Belgian, Italian, and Russian psychiatric teachers, our insane hospital management compares favorably with other countries. I speak to some extent from personal observation.

I am further of opinion that a little inquiry among those conversant with the condition of things would have led Dr. Mitchell to considerably modify his criticisms upon insane hospital management in this country. The majority of the neurologists consulted by Dr. Mitchell exhibited an ignorance of the conditions at present existing in American State institutions so gross that it is a source of wonder to me that even so distinguished a writer as Dr. Mitchell could be misled.

Of course there can be no two opinions among medical men concerning the absolute evil of basing appointments to professional positions upon political services. I am not convinced, however, that a physician who has pronounced political views, makes a worse superintendent than one who doesn't know the difference between the Democratic, Republican, Populist, or Prohibition parties. For myself I would rather trust to the common sense and fairness of a partisan, even though of opposite views, than to a political jelly-fish. Answering your specific questions, I would say:

I. There is no evidence to show that a hospital, in which the responsibilities are divided, is any better conducted for the patients than one in which the medical superintendent is, under the Board of Management, the sole authority. Until those institutions, in which the medical is divorced from the business management, show a decided superiority over those in which all the authority is vested in the medical head, I should oppose any change from the present system.

II. The Board of Managers should appoint. They are responsible to

the State for the proper conduct of the institution under their charge and should be unhampered in the appointment of their executive officers. So far as I know, and I have some personal knowledge on the subject, hospital managers are usually selected from among the best citizens of the State; men who try to do the best they know how for the unfortunates committed to their care. That they often fail, through bad judgment, is probably true; but in this event let not Dr. Mitchell, or any of the rest of us who never make mistakes, throw stones at them. I know of no set of public officials, who more carefully and honestly endeavor to perform their duties, than the managers of State hospitals for the Insane.

III. The first duty of a physician is to his patient; to find out what ails him, and to use the best means to remove or ameliorate his complaint. If "psychological and pathological studies" tend to advance these objects, they should certainly be cultivated. I am doubtful, however, as to the value of what is generally called "psychology." For practical purposes it seems to me absolutely useless. More accurate clinical observation in cases of mental disease is desirable. I would plead also for pathological studies that take in the entire body, and are not limited in their purview to the brain and spinal cord. Vacuolation of nerve cells may be important microscopic findings in certain morbid, as they appear to be in some normal mental processes, but a better appreciation of the interdependence of bodily functions and nutritive processes will lead to a more scientific pathology. In this connection I hail the more thorough study of extra-cranial morbid processes in cases of mental disease now going on in our hospitals. The clinical and pathological studies of kidney disease in the insane, which we owe to Christian of Pontiac, Alice Bennett of Norristown, Boudurant of Alabama, and of my assistants, Norris and Babcock, are not only stimulating, but point a way to prevention and treatment. The blood countings of Whitmore Steele of Utica, and of Houghton of Northampton, and the practical therapeutic deductions therefrom are worth more to the patients in our hospitals than all the microscopic brain studies made in the West Riding of Yorkshire in the last ten years. Pages could be filled with the mere enumeration of the thorough practical and scientific work doing in our hospitals, of which Dr. Mitchell and his neurological consultants have apparently found no record.

IV. The question of employment as a therapeutic agent in insanity is no longer an open one. Every hospital superintendent makes use of it to a greater or less degree. In this hospital 58 per cent. of the male and 40 per cent. of the female patients were employed daily during last year. In Kankakee and the Alabama hospital the percentage of patients employed is still higher. I know no State institution for the insane in this country in which systematic employment of the patients, prescribed by the physician, is not constantly insisted upon. Only Dr. Mitchell and the eminent neurologists he consulted seem to be ignorant of its extensive use. Perhaps their eyes have been so much directed across the Atlantic that what Americans have done in this line has escaped them. A little objective study of home conditions might enlighten them.

In my opinion, insane patients can be best employed in farm labor, road-making, grading, and similar work. Mechanical trades, requiring close attention, do not appear to me so suitable. However, with these I have had no personal experience.

Very truly yours,

GEORGE H. ROHE, M. D., Superintendent.

BROOKLINE, Mass., Oct. 14, 1894.

CLARK BELL, ESQ.:

Dear Sir:—Your circular letter concerning the management of the insane in American hospitals was duly received, and I take pleasure in answering your enquiries:

1. The physician at the head of the hospital should have entire control and general superintendence of all departments. He can, of course, have efficient subordinates under him to attend to the details of the work.

2. He should be appointed by the board of managers of the hospital.

3. Scientific work in the wards, at the bedside, or in the laboratory should be encouraged in the hospital, provided it does not conflict with the proper medical care and treatment of the patients. Its value should be recognized, but not magnified.

4. Employment of some kind should be provided for every patient not actually incapacitated by bodily infirmity. Its nature must depend on the kind of institution and the nature of the case.

Yours very truly,

WALTER CHANNING, M. D.

OFFICE OF SUPERINTENDENT, WESTERN STATE HOSPITAL,

STAUNTON, Va., October 15, 1894.

CLARK BELL, ESQ.:

Dear Sir:—In answer to yours of the 10th inst., I reply to your questions: The finances should be managed by the executive committee of board of directors, who are to examine vouchers monthly and make requisitions for monthly expenditures, upon statement of the steward as to supplies needed. The superintendent and executive committee of the board should be limited in their extent of expenditure to \$100, (that is the rule in this hospital) except for the necessary supplies. Steward to be bonded.

To your second question: Should be appointed by the board of directors, qualified by professional training and traits of character, who are appointed by the Governor of the State. There should be no politics "in it."

To your third question: Only so far as the medical staff may desire to pursue such studies for their own benefit and not to be enforced by law.

To your fourth question: All who are mentally and physically able should have some employment as, apart of moral treatment and diversion, occupation should be resorted to so long as it is beneficial. Dr. Mitchell's address was based upon *his own theories* as a neurologist, and not upon any practical experience in the management of insane hospitals nor with the character of the insane patients generally found in the

hospitals of the country. If he had two years' experience as superintendent of one of the State insane hospitals, his views and sentimental theories would undergo a radical change.

BENJ. BLACKFORD, M. D.

DANVERS LUNATIC HOSPITAL,

DANVERS, Mass., October 10, 1894.

CLARK BELL, ESQ., 57 Broadway, New York City :

Dear Sir:—Replying to yours of the 28th ult.:

1st. In my opinion it would not be better for the patients to restrict medical superintendents of lunatic hospitals to strictly professional duties, and I should not favor the change. Efficient management of a lunatic hospital depends upon the harmonious application of such a variety of principles—mental and moral treatment, general hygiene, discipline, and finance—there seems to be no natural line for a division of responsibility ; and authority must center in the responsible head. Tradition says there was perpetual friction within early-founded lunatic hospitals of New England, arising from the limited scope of the medical superintendent in the general management of the hospital. Gradually the system of divided authority was outgrown and supplanted by a better one, which recognizes the medical superintendent as the executive, as well as the professional, head of the institution, and the old-time internal official wrangles are experiences of the past. General hospitals have, as a rule, developed along the same line, and the management of such hospitals is now quite generally entrusted to a medical man. But why is it necessary to institute such a method of inquiry to settle these questions? Is it not true that the managers of some insane hospitals have tried to demonstrate the advantages of a system when a non-professional man is superintendent? When the records made by medical men, who hold the position of visiting or ward physicians only in lunatic hospitals, demonstrate the advantages of such a system, it will be very generally adopted in all probability.

2d. I think non-political boards of trustees, appointed by the Governor of the State, should have the whole power and responsibility of appointments in lunatic hospitals. In this State such appointments are made by the trustees, but must be approved by the Governor and council.

3d. Naturally scientific studies along all lines pertaining to insanity should be studied by the medical officers of lunatic hospitals, but legal enactments requiring definite duties in this respect would be useless and absurd.

4th. The form of employment must be adapted to the condition of the patient. I think about 50 per cent. of the inmates of lunatic hospitals can occupy themselves to advantage in some manner, more or less of the time. Out-of-door work is the most beneficial, as well as the most profitable. Housework, laundry work, and farming are the only industries to which the patients here seem adapted.

Very respectfully,

CHARLES W. PAGE, M. D., Superintendent.

COLUMBUS STATE HOSPITAL.

COLUMBUS, Ohio, Oct. 12, 1894.

HON. CLARK BELL, 57 Broadway, N. Y.:

Dear Sir:—Yours of the 6th is at hand. Regarding your first inquiry, I am inclined to believe that if the physician in charge of a hospital for the insane could be relieved of the business management without discord, it would be advantageous. I think under any circumstance the medical head ought to be relieved of the details of such management, and this, to a great extent, is true at present. Nominally, at least, I think he ought to be able to control this department, as far as it affects the treatment of the patients.

Second, I think the physician in charge should be appointed by the board of managers, but I think more care should be exercised in the selection of these boards, and that they should be chosen with especial reference to peculiar qualifications that would be of advantage in the management of such an institution.

Third, surely the most advanced scientific and pathological studies should be conducted by the medical staff, and should be required by law.

Fourth, the employment of the insane is a complex question, and its successful solution is exceedingly troublesome. I do not believe it feasible to teach the insane any trades that require expert skill, except in rare instances. Employment to be of advantage should be useful. Farming, gardening, the preparation of food, the care of the clothing, all household duties, and nearly every kind of work necessary to the care of such an institution can be successfully done by the insane. The simpler trades, such as brush, broom, and rug making, can also be successfully used, and I believe it possible to keep about sixty per cent. of the insane so employed.

Lastly, I desire to say that the improvement in the treatment of the insane is not measured by the increase in the recovery rate, and that there has been much improvement which neurologists and the public do not seem to appreciate. I believe if the results of treatment in other forms of diseases of the nervous system are compared with that of insanity, the recovery rate will cut about as sorry a figure. If neurologists were required to keep all their patients in public hospitals until death or recovery release them, I am inclined to believe that apologies would be in demand from them as to the barrenness of the results of their treatment.

Yours truly,

A. B. RICHARDSON, M. D., Supt.

MILWAUKEE SANITARIUM FOR NERVOUS AND MENTAL DISEASES.

JAMES H. MCBRIDE, M. D., Superintendent.

WAUWATOSA, Wis., Oct. 13, 1894.

CLARK BELL, ESQ.:

Dear Sir:—In reply to your various questions of September 27th, I have to say:

1. I do not think the superintendent of an insane hospital should have anything to do with the financial or business management of the institution.

2. Whether it would be better to have the superintendent appointed by some authority other than that of the board of managers it is difficult to say. That would depend upon the character of the authority that made the appointment.

3. I think scientific psychological and pathological studies should be pursued by the medical staff of every hospital. I doubt, however, if there would be any advantage in a law requiring this. If physicians in insane hospitals were relieved of the business management, if they could feel secure in their positions and were allowed such command of their time as is necessary for scientific work, I think they would be glad to engage in it.

4. The employment of the insane is a very complex question, and to be discussed fully would involve much detail. From personal experience, extending over twenty years, I should say a large majority of the chronic insane might be employed at some kind of labor with advantage to themselves. What this employment should be, how much, etc., would depend, of course, upon geographical location, the character of the patients in regard to previous occupation, and would need to be worked out in each institution separately, so far as details are concerned. Physical exercise in the way of manual labor, out-door amusements, etc., is the best sedative for the diseased mind and ought to be employed wherever possible.

Yours truly,

J. H. McBRIDE, M. D.

IOWA HOSPITAL FOR THE INSANE.

GERSHOM H. HILL, M. D., Superintendent.

INDEPENDENCE, Oct. 17, 1894.

HON. CLARK BELL, New York, N. Y.:

Dear Sir:—Your letter of the 6th inst. came to hand some days ago. The following are the answers to your questions:

1. It would not be better for the patients in a hospital for the insane if the business manager was not a physician. I do not favor a change of this kind.

2. The medical superintendent of a hospital for the insane should be elected by a board of trustees to serve for a term of six or ten years, or during good behavior.

3. The resources of every hospital for the insane should be sufficient to pay good salaries to all members of the medical staff, so that well-qualified physicians may be obtained, and so that they may have ample time and facilities for the study of both psychology and pathology.

4. From one-half to three-fourths of the patients in a hospital for the insane can be employed with benefit to themselves. Patients can assist attendants in house work, in such work as they learned to do and were accustomed to do before becoming insane; also in simple, healthful, out-door work.

Very respectfully yours,

GERSHOM H. HILL, M. D.

KINGSTON HOSPITAL FOR THE INSANE, ONTARIO.

KINGSTON, Oct. 20, 1894.

HON. CLARK BELL, MEDICO-LEGAL JOURNAL, 57 Broadway, N. Y.:

My Dear Sir:—In reply to your letter of the 15th inst., I would say that, while I am in accord with many of the ideas advanced by Dr. S. Weir Mitchell, and think that great good will result from his address, still better results would have followed if this address had been less one-sided and bitter. It is to be regretted that Dr. S. Weir Mitchell showed ignorance of the fact that many institutions have been following many of the reforms he advocates for years, while other so-called reforms have been tried and proved failures long ago.

On the whole, though, the address must be regarded as a useful criticism, and the fact that it was so well received proves, that hospital men are not so blind to the interests of the insane, as has been stated.

In regard to question No 1: It certainly would be better for the insane in a hospital, if its physician had nothing to do with the financial or business management, and most physicians would willingly be relieved of this responsibility. The trouble is, that the moment you have two heads to an institution, there is clashing of authority and endless dispute. The problem is not new, and a satisfactory solution has not been found.

To question No. 2: As a general rule it is found that the best hospital physicians are those who have had the advantage of hospital training and experience. They should be appointed by men who are qualified to judge of their scientific knowledge, promoted from the ranks, if possible, and their qualifications for office should be high scientific attainments, good executive ability, and a general culture that will enable them to deal with their patients in a broad-minded and sympathetic manner. These appointments should be as free from suspicion of political interference, say as appointments to the judiciary in England and Canada.

As to No. 3, my answer is yes.

To question No. 4: In Kingston Hospital for the Insane the employment of patients has been carried almost to its limit, and many years ago we demonstrated that employment, carefully directed, was the proper substitute for restraint. Every patient (except those physically incapacitated) is employed, and as a result we have a happy and contented population. Mistakes may be made in regard to the kind of employment offered to patients, and much tact is required to know what is best for each person. Only an intimate knowledge of individuals will enable a physician to decide this.

Yours sincerely,

C. K. CLARK, M. D., Medical Superintendent.

STATE HOSPITAL FOR INSANE.

HOSEA M. QUIMBY, M. D., Superintendent.

WORCESTER, Mass.

CLARK BELL, ESQ.:

Dear Sir:—In answer to your letter of inquiry of recent date regarding the management of hospitals for the insane, I say in answer to your first inquiry: No.

Second inquiry: By the board of managers.

Third question: Yes, advanced scientific psychological studies and treatment should be introduced and employed by the medical staff of a hospital for the insane, but I do not think it advisable, nor is it, in my opinion, necessary to be enforced by law.

Fourth question: The majority of the inmates of an asylum can be so employed, and in the farm and garden work and as assistants in carrying on the various industries appertaining to a hospital.

Truly yours,

HOSEA M. QUIMBY, M. D., Superintendent.

ROCHESTER STATE HOSPITAL.

ROCHESTER, Minn., Oct. 13, 1894.

MR. CLARK BELL, New York:

My Dear Sir:—Your letter of the 6th inst. received. Would answer your questions as follows:

1. No. I think Dr. Billings is on the right track when he says that the "Superintendent should be a medical man, but the treatment of the cases and the scientific work should be in other hands." This being the case, the more important office from a medical standpoint has been overlooked, namely, that of assistant medical superintendent, if I may use that title. To this officer, with no other responsibilities, should be delegated the strictly medical work of the institution, and with this in view men of acknowledged ability should be secured for the position, and well paid for their work.

2. The superintendent should be appointed by the board of managers; assistant superintendent and medical staff after competitive examination. Then changes in the superintendency, political or otherwise, would not affect the scientific work of the institution, as even a "political doctor" would encourage the good work of the staff.

3. Yes. Fast coming to it. Needs no law.

4. By building shops; if necessary to interest them, paying something for work done.

Most sincerely yours,

ARTHUR F. KILBOURNE, M. D., Superintendent.

HOSPITAL FOR INSANE.

E. S. BLANCHARD, Medical Superintendent.

CHARLOTTETOWN, P. E. Island, Canada, Oct. 22, 1894.

CLARK BELL, ESQ.:

Dear Sir:—Your communication is to hand. In reply I would say:

1st. In my opinion it would undoubtedly be better if the physician had nothing to do with the financial or business management of the institution, and I would favor such a change.

2d. The physician should be appointed by the board of managers and his term of office should be during good behavior.

3d. Certainly the most advanced treatment should be employed by the medical staff, but the most advanced scientific psychological and pathological research should be engaged in by experts employed for that purpose and for that purpose only.

4th. This question cannot be answered in set terms. The work that can be done with benefit to the patients varies with almost every individual and cannot be arbitrarily decided.

I remain, yours very truly,

E. S. BLANCHARD, M. D.

EASTERN HOSPITAL FOR INSANE.
MICHAEL CAMPBELL, Superintendent.

KNOXVILLE, TENN., Oct. 23, 1894.

CLARK BELL, ESQ.:

Dear Sir:—I will reply to the questions in your circular letter in the order in which they stand :

1. I do not think that it would be better for the insane in a hospital if the superintendent had nothing to do with its financial or business management, because the moral hygiene and medical treatment of the patients depend more upon such management than in a general hospital, making such a comparison out of the question.

2. I think that the superintendent of a State hospital should be appointed by a board of trustees. No other plan that I know of has been as satisfactory.

3. Advanced scientific psychological and pathological studies should, by all means, be introduced into and be a part of the daily work of the medical staff of a hospital for the insane. It is difficult for me to imagine a hospital where such studies are wholly absent. They are greatly restricted in many State hospitals for the want of financial means to carry them on. The popular prejudice against autopsies also prevents many investigations that would be valuable. It would be useless to enforce such studies by law. Where sufficient enthusiasm is wanting, when the means are furnished by the State, the medical staff should be removed and another appointed containing more capable men.

4. Seventy-five per cent. of all the insane in a hospital can be placed at some employment beneficial to themselves. Perhaps a larger number than I have mentioned would be nearer the mark. The kind of work done would depend upon the former habits, social position, and, to some extent, the nationality of the patients. To enter into the details of the method of such work would consume too much space.

Very truly yours,

MICHAEL CAMPBELL, M. D.

OAK GROVE, AN INSTITUTION FOR THE TREATMENT OF NERVOUS AND MENTAL DISEASES.

FLINT, Mich., Oct. 15, 1894.

CLARK BELL, ESQ.:

Dear Sir:—Replying to your interrogatories, I would say :

1st. No. I think the business and medical management cannot, with safety, be completely divorced. The medical superintendent should be able to dictate, if he pleases, the quality and amounts of supplies to be purchased, and should have, so to speak, a veto power, if business methods are not consistent with the welfare of the hospital or institution. He

should not, however, concern himself with details. His function should be chiefly or wholly supervisory.

2d. Yes. Boards of managers, in my experience in Michigan, are in close touch with all administrative affairs of asylums and have intimate acquaintance with the needs of patients. By visiting committees they learn for themselves all about the requirements of the asylums over which they are appointed. They should unquestionably have the choice of the medical head of the establishment, and authority to confirm or reject his appointments of subordinates.

3d. Yes.

4th. It is probable that in the majority of large public asylums, with which are connected ample grounds and farm, fifty per cent. or more of male patients may be regularly employed in the spring, summer, and fall months in occupations outside the wards or halls. This belief I have acquired by practical knowledge of what has been done in the Eastern Michigan Asylum, Pontiac, with which I was for many years connected. In cold or wet weather it is practicable also to employ patients in shops. Numbers of industries, profitable alike to patients and to institutions, are carried on in many of the American asylums. Sewing, knitting, weaving, fancy work, and many other kinds of employment for women, in all weathers, may be provided without great difficulty. The work of patients should invariably be under medical direction and the close supervision of skilled attendants.

Very respectfully,

C. B. BURR, M. D., Medical Director.

CRIMINAL INSANE ASYLUM.

STATE FARM, Mass., Oct. 12, 1894.

CLARK BELL, ESQ., Secretary of the Medico-Legal Society, No. 57 Broadway, New York, N. Y.:

Dear Sir:—In reply to the several questions which you have addressed to the profession, concerning the management of the insane American hospitals, I will say:

First.—I think that the business management should be adjusted to the medical in such a way that the medical superintendent should not be hampered in any way in the introduction of such means as are acknowledged to be of value in the treatment of the insane. This cannot, in my opinion, be brought about, unless the business and medical management are practically in the hands of the medical head of the institution.

Second.—I believe that the physician in charge of a State hospital for the insane should be appointed by the board of managers, but that the latter should be subject to certain limitations, viz.: That their appointee should be a man who has had several years' experience among the insane, certainly not much less than five, and the nearer ten the better. He should have come up from the ranks of the assistant physicians. He should bring to his position a knowledge of the workings of an institution for the insane in all its details, rather than have to acquire it after his appointment. Some such limitations, aside from their obvious advantage,

would, in a great measure, tend to eliminate the worse of all evils, and that is *politics* in these appointments.

Third.—Advanced psychological and pathological studies should be carried on, and advanced treatment should be introduced in the hospitals for the insane, certainly, but I think it would be unwise to complicate such matters by the law. In place of any such proceeding I would recommend that the medical staffs of the hospitals, say in any one State or section, should form themselves into associations, the work of which should be the simultaneous investigation of some one subject, or the following out of some one line of treatment for certain conditions; that there should be an occasional meeting, at which the results should be reported. These should be collated, and anything of value published in some prominent medical or psychological publication. Another line of investigation would thus be proposed, and so the work would proceed. Some such system, by which something definite and positive was being done or attempted by a comparatively large number of observers, with abundant opportunity for investigation at their command, could not fail, it seems to me, to stimulate the interest of all engaged in the specialty, and ought to produce very valuable results. The organization of such a system would be a task worthy of the American Medico-Psychological Association.

Fourth.—As regards the extent to which the insane can be beneficially employed, I think that it varies somewhat in different institutions, but, as a rule, about 50 per cent. are engaged in the out-of-door employments and in housekeeping. There is always a considerable portion of the remainder for whom I think special occupation can be devised in the mechanical line, and there are a number who can be interested more easily in occupations which appeal to the artistic sense. I think that more attention should be paid to these two latter points.

Respectfully,

ARTHUR H. HARRINGTON, M. D., Resident Physician.

PROVINCIAL LUNATIC ASYLUM, ST. JOHN, N. B., 20 Oct., 1894.

My Dear Sir:—Your esteemed favor of the 27th ultimo is received. It relates to matter growing out of the address of Dr. S. Weir Mitchell before the Medico-Psychological Society at its meeting in May last, at Philadelphia.

Your interrogatives attached, numbers I, II, III, IV.

In reply to your 1st, I have to say that I would favor a system reducing to a minimum the financial or business management devolving upon the Medical Superintendent of an insane hospital. But having absolutely nothing to do with business which would involve abrogation of selecting and fixing the pay of attendants and others immediately in connection with the sick, this I could not endorse.

Replying to your 2d, it may be stated simply that it is nearly impossible to escape political influence, because governments must necessarily control appointments in some measure. And it is as difficult to weed out or purge the statesmen as the profession. Can the stream be pure whilst the fountain is not? We can seek to educate and wait for higher civilization and the grander genius of the people in the age to come.

Question III, if I am not in error, contemplates an admission that the work now being done in the hospitals for the insane, for the cure and amelioration of the subjects of nervous disease by the hospital staffs, could be much better performed by certain neurologists who are not in charge of these institutions. This may be true or it may not; if pretentiousness is valid evidence, then the neurologists have the best of it. Much, however, would depend upon the selection of the subjects or persons for comparison on the two sides.

Most certainly I would say scientific psychological and pathological studies and treatment should be employed by the medical staffs of hospitals for the insane, and enforced.

Question IV, it seems to me, has received so much intelligent consideration, the points have been so generally agreed upon, and the practice so universally applied, that one need but visit a small number of well ordered hospitals to find a satisfactory reply to this inquiry.

Yours respectfully,

JAS. T. STEEVES, M. D.

TO CLARK BELL, ESQ., EDITOR MEDICO-LEGAL JOURNAL, &C., &C.

STATE LUNATIC ASYLUM NO. 2. SUPERINTENDENT'S OFFICE.

St. JOSEPH, Mo., October 12, 1894.

CLARK BELL, 57 Broadway, New York City, N. Y.:

Dear Sir:—My absence from the institution for the past ten days has caused delay in replying to yours of October 6th. I fully concur with Weir Mitchell in his article read before the American Psychological Association in regard to political interference, etc., but there were many parts that I did not and could not endorse, and feel it was a very unjust and uncalled-for attack upon the Association.

In answer to question 1, I think it far better to have the Medical Superintendent the General Superintendent of the financial, business, and general management, and would not favor change.

Question 2. See no reason why the Board could not appoint physicians in charge, provided they are men who are free from selfish interests, and believe that Medical Superintendent and all other medical officers should be appointed for a continuous service, to be removed only for cause. Think this would greatly improve the service of all institutions that have been in the habit of making changes.

Question 3. Yes.

Question 4. Think judicious employment advantageous to patient as well as beneficial to the institution, and all persons who are in condition to work should do a certain amount of that kind to which he or she is peculiarly adapted, especially that in which they take greatest interest.

Respectfully,

C. R. WOODSON, M. D.

STATE HOSPITAL, ROCHESTER, MINN., October 16, 1894,

CLARK BELL, ESQ., 57 Broadway, New York, N. Y.:

Dear Sir:—Your questions have been received. From ten years of experience, observation, and reading, concerning questions pertaining to hospitals for the insane, I would briefly answer as follows:

Answer to 1st question: I would answer "Yes," with some modifications. It has been customary for the Superintendent to have charge of farm, gardening, slaughter-house, bakery, kitchen, supplies, repairs, carpentry, engineering, sewage, and the very frequent building operations, etc., which, in the case of an asylum of 1,000 people, is a great task in itself, if well done. The "inside" administrative work is great in itself also, if thoroughly done. Now, the objections to a business manager have been in the past, chiefly: 1st, his "economic" ideas, invading and conflicting with "medical" work; and, 2d, the conflict of the two adjacent topics of administrative and economic character, along dividing line.

My answer would say "Yes," on the ground that a well defined limit *can* be easily made, giving the business man the supply or "outside" business; the physician, the *medical* work and the "inside" administration, meaning by such administration that pertaining to patients, and including the hiring of nurses and custodial service, and decision as to kind and quality of food and ward furnishing. He would, of course, also, have power to incidently terminate or modify patients' out-door labor, as medical or social ideas would indicate. I see no difficulty (except that of custom) in drawing this line, and no need in order to control inside matters to also put immense outside affairs upon a man who is a physician, with frequently no business training, and possibly no especial business ability.

2d question: The Superintendent and Medical Officers are probably best secured through a Board of Managers, but I think it would be an improvement if the board should consist largely of physicians of eminence in the State. This would give the administration more of a medical and less of a business trend. The Superintendents are now asked mostly business questions. Boards appreciate chiefly the business questions, while the public are of course chiefly interested in the business methods. Medical aims are thus rarely thoroughly discussed or made prominent.

In State institutions I do not yet see the way to keep out political influences *absolutely*. The above would, perhaps, approximate it.

Answer to 3d question: "Advanced psychological and pathological studies" could hardly be enforced by law, for assistant physicians, upon whom fall most of the clinical work, are usually quite recent graduates, and average only a few years' service before leaving the hospital. To secure the above mentioned studies, then, it would be necessary to have (at least as leaders) men who have either special training or special experience and whose aims and ambitions are high. To get such men, politics must be assured to them as not endangering the permanence of their positions, and the pay must be adequate to secure them. Of course no law can force advanced studies upon men who have not advanced in experience and attainment.

Answer to 4th question: In the eagerness to keep the farm and adjacent occupations, such as gardening, landscape work, repairs, etc., going, these are usually enlarged as fast as men can be induced to work. As many men as can be profitably employed in the manifold indoor and out-

door occupations of the ordinary asylum are so employed. It is this that makes a record of \$3.00 a week possible. There is probably rarely any trouble in providing mechanical and laboring work for patients, as far as it may be needed, farm and gardening being almost always capable of indefinite extension.

But there are a few patients, perhaps from one to three per cent., who would like a high grade of work. But higher grade work usually has to be provided at *expense*; the workers in each especial line are few, erratic, and uncertain, and the experiments apt to be expensive. Medium work, however, like chair-weaving, carpet-weaving, broom-making, brush-making, etc., can be provided at an expense which, though not extreme, will usually not bring financial profit.

A farther considerable number of patients, however (from fifteen to forty per cent.), can only be made to work at considerable expense. They are unwilling, or lazy, or extremely depressed, and maniacal. Labor would be obtained which would be of slight value, of much cost for supervision, and of perhaps doubtful value to the patient. Occupation, though of great value, is of the *same* value to an insane patient as to a sane man. The value lies in the common sense worth of diversion of mind and activity of bodily functions toward health; there is no mysterious element.

In general, I would simply add by word of comment, that you can prove hospitals for the insane to be good, bad, or indifferent by picking out especial ones, and as writers dislike to specify, we are all seemingly getting the criticisms belonging to the poorest.

Yours sincerely,

R. M. PHELPS, M. D., Assistant Superintendent.

SUPERINTENDENT'S OFFICE, SOUTH CAROLINA LUNATIC ASYLUM,
J. W. BABCOCK, M. D., Superintendent.

COLUMBIA, S. C., November 2, 1894.

CLARK BELL, ESQ., EDITOR MEDICO-LEGAL JOURNAL, New York:

Dear Sir:—I have attempted to express as briefly as possible my views on the questions you recently submitted to me:

I. A large State hospital for the insane requires, in my opinion, a separate business manager, but he should be subordinate to the Superintendent. After ten years of asylum work I am convinced that the proper care of patients, as well as the orderly discipline of the institutions, demand the presence of one responsible chief officer, who should be a physician of experience. The so-called "dual" system can succeed under exceptional circumstances only.

II. Theoretically, I should think a civil service commission would best discharge this function. In default of such a commission, let the appointment be made by the Governor of the State upon recommendation of the Board of Managers. A Superintendent cannot be wholly independent in action, if his tenure of office rests absolutely with his managers.

III. Emphatically yes. In the future, public opinion will demand that State hospitals (which have passed the asylum stage) shall maintain laboratories for the investigation of psychological, pathological, and hygienic

problems. Such laboratories will tend to make State hospitals what they ought to be—recognized centers of scientific investigation.

IV. Employment is a therapeutic measure for all classes of the insane (except as specified in the question). No less than seventy-five per cent. should be employed in some manner. All nurses upon the insane should be instructed in the fundamental principles of this vital matter. When properly prescribed, work promotes cure or retards dementia. New patients, on finding some form of work insisted upon, contract the good habit of working as readily as they too often do the bad habit of idling. If these principles are recognized and put into practice the special kind of work is of less importance.

Trusting that they may serve your purpose, I am—

Very truly yours,

J. W. BABCOCK, M. D.

BUTLER HOSPITAL.

PROVIDENCE, R. I., October 12, 1894.

Hon. CLARK BELL, 57 Broadway, New York City :

My Dear Sir:—Your valued favor of October 6th is before me. The matter to which you call my attention is certainly important and worthy the most careful consideration, but can hardly be intelligently discussed within the limits of a letter.

To your first question I would say that the experience of all large hospitals for the insane which have tried the experiment of a dual management has been unsatisfactory. Properly organized, a hospital can be, in my opinion, properly superintended by a medical man, the financial management really requiring but a fraction of his time. Improperly organized, it may take his whole time.

To your second question I would emphatically pronounce in favor of the appointment of the physician in charge of the State hospital by the managers thereof. Any other mode of appointment could result only in ceaseless friction, jealousy, and insubordination. The danger is not so much that the manager will appoint an incompetent man as that incompetent managers will be appointed in all States where politics prevail. No political appointment is likely to be the best.

To your third question I should say that "advanced scientific psychological and pathological studies and treatment should be employed by the medical staff of a hospital for the insane." I see no advantage in enforcing it by law, but can see that if legislation will grant money enough for such work to be undertaken, much would be done voluntarily, for the work's sake. Statutory pathology would not be worth much, I fear. It is well known that the medical staff of a general hospital is many times as large as that of an insane hospital, and much of the scientific work of the general hospital is nevertheless one by special workers in pathology, bacteriology, etc. It would therefore appear as though special work in hospitals for the insane should be done by additional members of the medical staff, specially trained for the positions they shall hold.

To your fourth question I could not presume to give anything like a definite answer. In general all patients who can be employed should be

occupied in some way. In the ordinary large hospital for the insane a large percentage (say 45 to 60 per cent.) of the patients are employed, to say nothing of numbers who work in a desultory way. How they can be best employed will depend upon the character of the population supplying the largest proportion of patients. Agriculturalists will seek the farm and gardens. Artisans the shop. It will be easily seen that fixed values for the employment of the insane cannot be made. The means must grow out of the necessities of the situation in the case of each institution.

Thanking you for your courtesies,

Very faithfully yours, W. A. GORTON, M. D., Superintendent.

Dear Clark Bell:—To answer your questions in regard to the management of American hospitals for insane intelligently, I shall confine myself to those of Indiana, each State having different laws.

In Indiana are four hospitals, where both chronic and acute cases are kept, and the State is divided into four hospital districts. Each hospital is governed by a board of three trustees, appointed by the Legislature, and strictly partisan. The trustees make all purchases, let all contracts, and virtually make all appointments, for while the law permits the superintendent to nominate, the trustees must confirm, and they usually control the appointments, from the dish-washer and laundry girls up to the superintendent.

The selection of trustees is made simply on account of their political value to the party appointing them, and the subordinates are appointed for their value to the trustees and party.

There is a Board of State Charities appointed by the Governor, non-partisan and non-paid, but it has little or no power conferred upon it, except to inspect the various charitable institutions, investigate complaints, and make suggestions.

It would, undoubtedly, be better that the physicians of hospitals for insane have nothing to do with the financial management.

I believe the superintendent should be appointed by the Board of State Charities, if such exist, or by the Governor of the State, but that no one should be appointed who had not several years of experience in a hospital, in which he had shown a high grade of ability in his profession, as well as ability to govern himself and others. When the superintendent is appointed, all other appointments should be made directly by him.

Advanced scientific, psychological, and pathological studies and treatment should be demanded and enforced by law. If a patient die, the law should ask: "Why did this patient die?" and the physician be compelled to make most careful pathological research to find the answer, if possible.

In hospitals where the patients are both acute and chronic, as in Indiana, I think that two-thirds of them could be employed to their benefit. As to *how* best to obtain the benefits of employment is a question most difficult to answer—the farm, the dairy, the shop, and school for both sexes; various kinds of needle and fancy work for the women.

W. B. FLETCHER, M. D.,
Indianapolis, Indiana.

MT. VERNON, N. Y., September 29, 1894.

CLARK BELL, ESQ.:

Dear Sir:—In reply to your communication of the 26th inst. I enclose the answers to the three questions regarding asylums and management. My answers are to the—

1st. Yes, provided that the physician was the superior officer, in order that his suggestions or orders should be faithfully carried out. To the—

2d. No. By competitive examinations, as in New York State hospitals. To the—

3d. Yes. To the—

4th. In out-door employment, in novel manufactures, different branches of art, as painting, drawing, sculpture, carving (wood), the general work of the institution, floriculture, etc., when judiciously allotted by a competent and discerning physician.

Truly yours,

W. S. FLEMING, M. D.

MICHIGAN ASYLUM FOR DANGEROUS AND CRIMINAL INSANE.
SUPERINTENDENT'S OFFICE.

IONIA, Mich., Oct. 27, 1894.

Mr. CLARK BELL, Editor MEDICO-LEGAL JOURNAL, New York:

Dear Sir:—In reply to the questions recently submitted by you, my opinion is as follows:

Question 1. I think the physician in charge of a hospital for the insane should control the business and financial part of the institution, and I would not favor a change from such methods.

Question 2. I think the physician in charge of a hospital should be appointed by a board of managers.

Question 3. It is my opinion that advanced scientific psychological and pathological studies and treatment should be employed by the medical staff of the hospital, but cannot see the necessity of enforcing the same by law, the prime requisites being the appointment of a competent physician in charge and the granting of proper financial aid. If these conditions are carried out, the best treatment will, in my opinion, be the natural result.

Question 4. I am of the opinion that 70 per cent of the insane in institutions can be employed without any detriment to the patient, and, in very many cases, with great benefit in curative and other ways. Farm work is generally conceded as perhaps the best, but as all cannot be thus employed, it is necessary to devise other methods of employment. Buildings should be constructed in connection with every asylum, equipped for the manufacture of clothing of all kinds used in the institution, brooms, rugs, carpets, brushes, printing, and such specialties as patients are often found to have adaptability to.

Very respectfully,

O. R. LONG, M. D., Medical Superintendent.

STATE HOSPITAL, MORGANTON, N. C.

P. L. MURPHY, Superintendent.

October 13, 1894.

Hon. CLARK BELL, New York :

Dear Sir :—Your circular letter of the 6th inst. has just reached me. It is hardly necessary for me to discuss the propriety or good taste of Dr. Mitchell's address before our association last May. I will proceed at once to answer the questions you asked.

Question 1st. I think it is decidedly better that the physician in charge should have entire control of all business of the hospital. It is not often necessary, with faithful officers, for the medical superintendent, to trouble himself with the details of the business management. If he is empowered to select his own subordinate officers, he can easily have their loyal support and aid.

Question 2d. I should think that the board of managers or directors should appoint the physician for a term of years.

Question 3d. I should think that advanced scientific psychological and pathological studies and treatment might be employed in large hospitals, and, of course, to a certain extent, in all.

Question 4th. Every individual who is physically able is bettered by being employed at some thing. The inmates of a hospital for the insane are no exception, and, as far as possible, all should be employed. Most of the patients of this hospital are from the rural districts and are accustomed to manual labor, and they are happier and better contented at work; indeed, most of them prefer it.

If the affairs of any hospital or asylum are administered in the interest of any political party, the best results cannot be obtained. It is unfortunate that politics cannot forever be banished from their management. Many of the ills of State hospitals are directly or indirectly due to this cause. I trust that these replies will be of use to you.

Yours truly,

P. L. MURPHY, M. D.

MAINE INSANE ASYLUM,

BIGELOW T. SANBORN, M. D., Superintendent.

AUGUSTA, Me., October 26, 1894.

CLARK BELL, Esq., 57 Broadway, New York :

Dear Sir :—Please find herewith answer to questions I received in your circular letter dated September 26th. I have been brief as possible, though much might be said in discussion of the subjects mentioned, and had I the time, would prepare a statement on these points. While Dr. Mitchell has made some valuable suggestions, I am afraid I could not coincide with his ideas on hospital management :

1. I believe it better for the insane in a hospital that its physician shall have the direction of the financial and business management.

2. The physician in charge of a State hospital for the insane should be appointed by its board of managers or others acting for the State in a similar capacity.

3. I believe that advanced scientific psychological and pathological

studies and treatment should be introduced and employed by the medical staff of a hospital for the insane and enforced by law.

4. I believe the employment of the insane to be an important adjunct of their medical treatment, and I would have it systematic, adapted to the case and conducted under the supervision of a physician.

BIGELOW T. SANBORN, M. D.

KANSAS STATE INSANE ASYLUM.

J. H. MCCASEY, M. D., Superintendent.

TOPEKA, Kas., October 30, 1894.

MEDICO-LEGAL JOURNAL, 57 Broadway, New York:

Dear Sir:—Enclosed please find brief answers to your questions:

1. It would be better for the insane in a hospital if its physicians had nothing to do with the financial or business management. I would certainly favor such a change.

2. The physician in charge of a State hospital should be appointed by its board.

3. Advanced scientific psychological and pathological studies and treatment should be employed by the medical staff of a hospital for the insane, and enforced by law.

4. inmates of an asylum can be judiciously employed. Working on the farm, garden, about the barn, kitchen, laundry, and shops of industry, such as broom-making, brush-making, mattress-making, shoe-making, carpentering, tailoring, may all be judiciously carried by the inmates of an insane asylum under the direction of skillful attendants.

Very respectfully,

J. H. MCCASEY, M. D.,

Superintendent Topeka Insane Asylum.

LETTER NO. 25.

MASONIC TEMPLE, MINNEAPOLIS, Minn., Oct. 5, 1894.

CLARK BELL, Esq.:

Dear Sir:—Yours concerning the "Management of Hospitals for Insane" at hand. In reply to your first question, I answer no to both parts. I think the whole financial and business management of the hospitals should be under the care and control of the physician and superintendent, subject only to the board of directors. I do not mean by that he should attend personally to all the details of business or the finances; but he should have full control of all persons called to his aid in the management, and be responsible to his board for their conduct. The physician should know what each patient needs for supplies of furniture, food, and clothing, and have the power to secure the same without submitting his orders to a business or financial manager, who can know nothing, or very little, as to the case, and may have his own ideas as to economy, or habits of delay in acting, which interfere with the results of treatment.

The physician in charge should have full authority to call to his aid competent assistants, by and with the consent of the board, and special assistants, as occasion may demand, for consultation, including pathol-

ogists and neurologists. He should have authority by statute law to make autopsies at his discretion.

2. I think the board of directors, if competent men, the proper party to select the physician to superintend the hospital. All good men deplore the political influence in the appointment of a board of directors, as now existing in some of our States; but we hope time will cure such folly.

3. "Advanced Scientific Psychological and Pathological Studies and Treatment" should be carried on in all our hospitals, and the work should be done by special assistants trained for that purpose, as the late John P. Gray, at Utica, New York, carried on the work, and I am surprised that Dr. Mitchell did not even allude to what was there done for science and the profession.

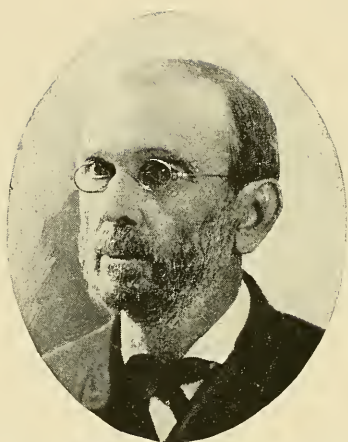
4. The answer to your last question will depend upon the class of patients under treatment. For ordinary laborers, the most numerous class in all our State hospitals, farming, gardening, and the care of stock are the most suitable employments, and, in fact, would be for any class of men if they could be interested in such out-door work. I think Dr. Mitchell must have had the Blockley hospital in his mind while writing on the employment of patients. Idleness is not the rule in our State hospitals, so far as I know them, and I suppose about three-fourths of the patients find employment within the buildings or on the farm every day in suitable weather.

I would like to have some competent physician fairly review the paper of Dr. Mitchell from the hospital standpoint, as some of his statements are unjust, and will create a wrong impression abroad as to the fitness of our medical men in charge of our hospitals for the offices they hold. For instance, the doctor finds fault because the hospital physicians do not possess certain qualifications, which, if they did possess, would undoubtedly disqualify them for the positions they hold. If they were experts in neurology and pathology, they would have neither the time nor inclination to look after the individual cure of the hundreds of patients under their charge.

As to the "Ideal Hospital," it can be found, so far as buildings, furnishings, and outside surroundings are concerned, in this country, in England, Scotland, and on the Continent, and many of them. "Ideal patients" are not so common; in fact, they are rare; and they do not come to our State hospitals so that an assistant physician can spend two or three days with each before it is placed in the hands of the ideal nurse. But real cases come often, three or more in a day, excited, dirty, noisy, resisting all food, tearing off all clothing, sleepless, and not so much in need of a companion as care and medical treatment. The question is, what shall be done with such cases—and at once? I presume most doctors would say, bathe, feed, quiet them if possible, give them rest, and a chance to recover.

Respectfully yours,

C. K. BARTLETT, M. D.



HON. GEORGE WASHINGTON STONE,
Chief Justice Supreme Court of Alabama.

THE TRUE FIELD OF DUTY OF THE RAIL- WAY SURGEON*.

BY CLARK BELL, ESQ., VICE-CHAIRMAN SECTION OF MEDICO-LEGAL
SURGERY, MEDICO-LEGAL SOCIETY.

The railway surgeon has the same interest in the honor of his profession as has any other surgeon, and he must be, perhaps, more careful to hold the standard high, because of the delicate position in which he is often placed. The line of his duty in relation to the injured who come under his hands for treatment requires the exercise of great tact, discretion, and good judgment.

Of course he is bound to give his best efforts to the surgical care and treatment of the injured.

In that respect I see no line of difference between the duty of the Railway Surgeon and that of any surgeon called for treatment of a patient injured in a railway accident.

The delicacy of his professional position commences the moment the question of compensation for the patient's injuries against the railway company arises.

As he has been the attending physician and surgeon of the injured man, he can, in honor, take no step against him that would injuriously affect his rights. His relation as surgeon of the railway company, although it may have been well understood by the patient, places the surgeon under no obligation to the railway company to act in the slightest degree with injustice to the patient.

* Read before the Section on Medico-Legal Surgery of the Medico-Legal Society, November 15, 1894.

This makes an adjuster of claims an indispensable necessity to a railway company. This also necessitates the employment of an attorney by the railway company, who has and should have the charge and responsibility of any question of negotiation, compromise settlement, or, indeed, of controversy, whether litigation ensues or not.

It may, therefore, be laid down as fundamental, that under no circumstances should the Railway Surgeon act directly or indirectly as an adjuster of claims.

It may, with equal propriety and force, be properly said that under no circumstances should he act as the attorney of the railway in the matter of the adjustment, or settlement of a claim, or in relation to influencing the patient to settle his claims.

It is at this point that the delicacy and embarrassment of any deviation from his strict line of duty as a physician and surgeon begins.

He knows better than anyone else—better than even the patient himself—the exact nature, character, and extent of the injury.

His knowledge, however, is acquired in the practical duties of his professional work, and the patient, in that respect, professionally has higher claims upon him than the railway company, because his knowledge is such as the law regards as confidential and sacred between the patient and his physician.

If an excessive or an unjust claim is made against the company, no one knows it better than the surgeon.

It is the interest of the railway to adjust the damages at as small a sum as possible. At least we may safely say this as a general rule—in nearly all cases.

If the injury be more serious than was originally supposed, and is likely to increase rather than diminish the losses he will in future sustain, and if this be unknown to the patient,

the physician and surgeon knows it well, better than any other person.

Such a condition of affairs only adds to the delicacy of his position.

Generally speaking, then, his duty is :

1. To fairly and truthfully advise the patient of the nature, character, and extent of his injuries, if requested so to do.

2. To so advise the railway officials, counsel, and adjuster, though, perhaps, an exception should be made, in the interest of the patient as to facts and knowledge obtained confidentially from the patient, or in treating the case, which would prejudice the patient's rights and interests. In such a case, were I the private counsel of the Railway Surgeon, I should advise him that, as to such facts or knowledge, his lips should be sealed as closely as would be those of a family physician, were he in charge of the case for the patient.

3. The entire responsibility of the compromise, adjustment, or defense in the courts of a claim for damages should be left by the Railway Surgeon with the attorney of the company and the adjuster of claims.

The Railway Surgeon should take no part in it, pro or con, beyond a fair, honorable, conscientious statement of the facts of the case and the nature, character, and extent of the injury to the proper railway officials.

DUTY AS A WITNESS.

In cases where the controversy results in a litigation, his evidence should be that of simply describing the actual facts of the case, the treatment, and to a description of the nature, character, and extent of the injury, holding the scale of his judgment as evenly balanced between the patient and the company as it is in his power to do.

THE COURTS.

In the tribunals judges have always regarded any interference by surgeons in the compromise or adjustment of a claim with great repugnance.

The case of *Smith vs. S. E. Ry. Co.*, tried in Queen's Bench Division, February, 1893, in England, excited great public interest because the Lord Chief Justice (Coleridge) denounced from the bench the company for the conduct of its medical officers.

I quote his language :

If the Court of Appeals apply to me I shall say to them what I have said to you, and I may add that, as I said at the trial, anything more improper than what was done by the company's medical officers—I mean in making offers of various sums to the plaintiff—I never heard.

I thought all the great railway companies had given up the practice—medical men huckstering with the parties injured as to the amount of damages.

Both courts and juries have punished railway companies who practice this by heavy verdicts.

There was a time, half a century ago, before the day of railways, when it was the custom of both sides to employ the medical man to negotiate and even settle the amount of the claim when he made his examination as to the character and extent of the injury.

This old practice, both in England and America, has fallen into disrepute, because the courts have refused to accept the safety of such evidence from the medical officers of a company. Judges have explained the danger of conceding the impartiality of a medical adviser who had been employed to estimate the damages.

In some cases, as an outgrowth of that old practice, medical men have been engaged by railway and other corporations for such work, but they would not be wise to attempt to put on the witness stand the medical officers who had

been in any way concerned in the negotiations for settlement of a claim for damages.

This subject was alluded to in that case by the Lord Chief Justice, in the following language :

The company must have a medical officer to go into the circumstances of each case and report to the directors, and within the proper limits he would be entitled to respect, but when he termed himself a sort of accident broker, and tried to see how cheaply he could get his company off, then he went entirely out of the line of his duty and turned himself from the duties of a noble profession into a chafferer in damages, huckstering with parties about the damages to be given them.

Nothing can be more reprehensible, and I may say more dangerous, to the true interest of a railway company than to ask assistance of this character from its medical advisers.

Nothing is more calculated to bring the honorable profession of the Railway Surgeon into public obloquy and disrepute than such practices by Railway Surgeons. The temptation of the zealous Railway Surgeon to interfere in a case that he knows is obviously a fraud, or where enormous damages are claimed on false and trumped-up testimony, is often very strong, but the dignity and the honor of the surgeon and his profession are also worthy of consideration at his hands.

The *London Lancet*, in commenting upon this subject, advances the proposition that when the medical advisers on both sides of a controversy were asked, by mutual consent, to assess the damages for an injury, with the conditions especially stated that a Railway Surgeon could, with professional propriety, act in that capacity, from which opinion I see no reason to dissent, but in that case it would be a question for the Railway Surgeon, in certain cases, whether he could conscientiously do so.

While the occasions that have called out judicial condemnation may have been more the fault of the railway management than of Railway Surgeons, the lesson taught has a two-fold application. To show the managers of railways how un-

wise it is to ask such a service from their Railway Surgeons, on the one hand, and, upon the other, to make Railway Surgeons the more cautious and firm in holding bright and untarnished the honor of a noble profession.

I have thought it would add interest to the consideration of this subject to ask some of the leading Railways Surgeons of this body to give in brief their views, to accompany my paper, and I take great pleasure in closing what I have to say, for the purpose of opening the subject for discussion and the careful consideration of Railway Managers and Surgeons, by submitting a few of these opinions.

Surgeon General Nicholas Senn, Vice-Chairman of this Section and Surgeon General of the State of Illinois, says :

CHICAGO, Ill., Oct. 15, 1894.

Dear Mr. Bell:—There has been too much attention paid by surgeons to the betterment of claims against railroads. The proper function of the Railway Surgeon is to attend to sick and injured as he would to private patients and leave all legal matters to the proper authorities.

Very sincerely yours,

N. SENN.

Chief Surgeon S. S. Thorne, Vice-Chairman of this Section and President of the National Association of Railway Surgeons, says :

TOLEDO, Ohio, Oct. 16, 1894.

HON. CLARK BELL, New York, N. Y.:

My Dear Sir:—The duties of Railway Surgeons, if well performed, should be satisfactory, if held within strict limits. No going outside. I know the courts and the bar are zealous and jealous, impatient of interference. Yet they too overrun professional limits. It's difficult to say where day ends and night begins. The two should work together, and are more successful when done than either alone. If I go to New York, I will make it my pleasure to see you.

Very truly yours,

SAMUEL S. THORN.

Chief Surgeon C. K. Cole, of the Great Northern Railway Line, Montana Central Railway, says :

HELENA, Montana, Oct. 17, 1894.

HON. CLARK BELL, New York :

My Dear Sir:—The consensus of opinion among both Railway Surgeons and medical men generally, as well as the legal fraternity, is that

there is too great a tendency for the Railway Surgeon to feel, when litigation on account of damages occurs, that he must be actively partisan in behalf of his company. That this is occasionally true admits of no doubt; that it is some times carried to the extent of actions, unprofessional and undignified, is equally true.

While the company surgeon should not act as an adjuster of claims or participate in negotiations looking to settlement, he should remember, that, as a company official in charge of a department involving grave and important interests, he must be loyal to the railway, and should in every *honorable* way, consistent with his *quasi* judicial position, serve it. This he can do without disturbing the proper relation between physician and patient, or in any sense violating his conscience.

It would seem equally absurd for the surgeon to busy himself in behalf of the railway, in securing or making testimony, or, on the other hand, in declining to advise or consult with the attorney of the company in a legal controversy on account of injury.

To give clear medical testimony, without prejudice or partiality, is unquestionably the chief function of the railway surgeon in his relation to the courts; and when he departs from this rule, and shows that his statements are biased, or it is shown that his actions, and especially his treatment of the case prior to the trial, have been those of a partisan, he at once lessens his influence with all concerned, including the court, and and loses *caste* with the patient, the railway, and, most important, with *himself*.

Yours truly,

CHAS. K. COLE.

Chief Surgeon D. R. Stuart, Houston & Texas Central Railroad, says :

HOUSTON, Texas, October 17, 1894.

CLARK BELL, No. 57 Broadway, New York, N. Y.:

Dear Sir.—Your favor of October 13, 1894: Briefly I am opposed to the Railway Surgeon effecting settlements of any nature whatsoever with the injured employes of lines under his direction. To illustrate: Instructed one of my surgeons at Bryan, on H. & T. C. Railway, to settle with some injured employes. He had previously administered morphine to quiet and alleviate pain. The patients afterward sued. Court set aside settlement, and it was urged by the plaintiff and counsel that *we* had first drugged and then caused the patients to sign releases. This, of course, is untrue, but they got judgments all the same. Experience teaches me that expert testimony by railway surgeons in the courts of this State goes for naught and is not treated with any consideration by the juries. Trusting this covers the case as requested by you,

I remain very truly,

J. R. STUART.

Prof. E. R. Lewis, M. D., Treasurer of the National Association of Railway Surgeons, replies as follows :

KANSAS CITY, Mo., October 16, 1894.

Hon. CLARK BELL, Editor MEDICO-LEGAL JOURNAL, 57 Broadway, New York :

My Dear Sir :—Your letter inquiring as to my views upon the paper you expect to read, namely, "The True Line of Duty of the Railway Surgeon," is duly noted, and from what you say I feel certain that I coincide with you upon the relation of the medical department to the claim department, and believe the two departments to be as distinct as it is possible for two departments of any corporation to be. I certainly do not believe it is at all practicable or feasible for the medical department to come in any way in contact with the claim department, in so far as the dickering for settlement of the injured is concerned, and I do not believe any claim department will respect the company's medical employes who will consent to dicker with patients for them.

I am exceedingly sorry that I cannot be with you, and hope that I may have the pleasure of reading your paper soon after it has been read before the Medico-Legal Society.

With best wishes for you and yours, I am, respectfully,

E. R. LEWIS.

R. Harvey Reed, M. D., late Treasurer of the National Association of Railway Surgeons, Editor Columbus *Medical Record*, says :

COLUMBUS, Ohio, Oct. 16, 1894.

Mr. CLARK BELL, New York, N. Y.:

Dear Sir :—Replying to your favor of Oct. 12th, asking for my views on the subject of "The True Line of Duty for the Railway Surgeon," I beg leave to say that it is my opinion that the railway surgeon should confine his duty, so far as possible, to the care of the sick and wounded. He should always be honest with his patient, kind, courteous, and, at the same time, firm, when such is necessary to give the patient the best chances for his speedy and permanent recovery. As a witness he should adhere strictly to the truth and view every case from a scientific standpoint. As a witness he should neither be for the defense nor the prosecution, but should be a scientific witness to bear testimony on the scientific facts presented in the case. Whilst there may be circumstances in which a surgeon might to advantage act as a claim agent in settling claims between an injured party and the company, yet I think, as a rule, the attorneys should attend to this business, and the surgeon should attend to that which comes directly within the pale of his professional career. It is my firm belief that the closer the railway surgeon and the attorney adhere to these principles the more they will be respected by all parties concerned and the more service they will be to the claimants and the company.

Very respectfully yours,

R. HARVEY REED.

Chief Surgeon C. A. Smith, of the Cotton Belt Route, of Tyler, Texas, writes :

TYLER, Texas, October 18, 1894.

Hon. CLARK BELL, 57 Broadway, New York :

Dear Sir:—I enclose you a quotation from my address, relative to the matter you mention in your letter enclosed, viz.: "The Line of Duty of the Railway Surgeon," especially as regards his position as adjuster of claims, or to aid in negotiations for settlements, etc.

"Surgeons connected with the medical departments of our railways, owing to the very nature of the case, must, of necessity, become very intimately connected with the law department; but, in my opinion, should never be under its direction, or be made a part of it, but always be maintained as a separate and distinct department. I would earnestly advise a critical study of medical jurisprudence upon all surgeons connected in any way with railway practice, and especially would I commend the study of the legal rights and privileges of the medical witness in our various courts of justice. I desire, once for all, to deny the charge which has been lately brought forward, that the various associations of railway surgeons have for their main aim and object the education of medical witnesses to defend their companies against lawsuits, and especially against suits based upon John Erick Erickson's concussion of the spine. I do not think that railway surgeons should act as claim agents for their companies. A fair and impartial statement of the nature of the injuries received should be made, whether the injured party be employe, passenger, or neither. The report should be clear and precise, and, as far as possible, devoid of technical terms, and if it contains a personal statement, it should be taken when he is competent, mentally, to make such a statement. No undue influence should be attempted in obtaining statements relative to how the accident happened, always remembering that it is 'the truth, the whole truth, and nothing but the truth' that is wanted, also remembering that nothing can bolster up a lie or truth half told; state facts in your reports. In testifying before courts of justice, always stick to the exact facts in the case, neither turning to the right or left, no matter what the consequences may be to the corporation.

"To the honor of the railway officials with whom I have been associated during the past fifteen years, I can truthfully say that I have never received any other instruction or advice, or known of any attempt to pursue any other policy than that above indicated."

Yours truly,

C. A. SMITH,

W. B. Outten, M. D., Chief Surgeon Missouri Pacific Railway, replies as follows :

We believe with Thoreau, "Duty is one and invariable; it requires no impossibilities, nor can it ever be disregarded with impunity." The true line of duty of the Railway Surgeon is essentially the same as that of any honorable, honest man. He should be employed for his true capacity and

ability as a surgeon, this is the cause and the criterion of his merit. The truer the Railway Surgeon embraces his vocation as a physician and surgeon the better, broader, and more efficient becomes his service. In the perfection of his knowledge of medicine lies his merit. It can be safely maintained that if his knowledge of medicine is requisite to meet all demands it can only tend in the direction of science and truth. He should never, under any circumstances, attempt to occupy a dual position, but preserve unceasingly an honorable, upright individuality as a surgeon and an honorable man; nothing more. When he essays the function of claim agent or attorney he ceases to be a surgeon, and essays a function which the nature of his business and training unfit him for. He can at all times best serve the corporation by which he is employed in the most effective and comprehensive manner by maintaining the just, the true, the honorable. Any service which demands the loss of individuality the use of falsehood, or dishonest method, needs but time to engulf and destroy any one employed in that service. Our actions are not only the formative element of the aggregate of our character, but most frequently the determining factor of our success and happiness. Actions make results, and often are not only indelibly impressed upon an individuality, but upon a community or nation as well. The full force of trust and respect only lie in honesty and truth, but there seems to be no limit to the distrust and loss of respect when the reverse is the case. The Railway Surgeon should never permit his prejudice to thwart his judgment; partisanship in his position soon leads not only to loss of respect upon the part of his employer, but of all with whom he may be brought in contact. Avoid falsehood, prejudice, and partisanship. Avoid falsehood because it is a subterfuge of cowards, fools, and villains. Prejudice is a fungus growth, causing mental deception, and always thrives best in partisanship, the jaundiced realm of reason. He should be faithful, sincere, honest, and earnest; faithful, because of the belief in right; sincere, because sincerity is the very soul of conscientiousness; honest, because it is the only true, straight, easily defensible line of action; earnest, as earnestness is but the varying effective phase of patience, endurance, and strength. A truthful, competent, honest Railway Surgeon is ever a prime economical factor in railway management; the reverse, misleading extravagance. The full force of insinuation, plausible, and combative circumstance continuously surround the position of the Railway Surgeon. It requires judgment, honesty, and assertiveness to maintain an upright individuality. It has been very truly said that "A good character is in all cases the fruit of personal exertion. It is not inherited from parents; it is not created by external advantages; it is no necessary appendage of birth, wealth, or station, but is the result of our own endeavors." The Railway Surgeon's duty is at times four-fold—his duty to himself, his duty to his patient, his duty to his employer, and his duty to the community. If he is true to the first two duties the two last will never suffer. The Railway Surgeon's duty then "Is one and invariable," hence it can never lean in the direction of crime, neglect, or falsehood, but only in that direction which honest function demands, and carries in its very

core the "Golden rule of action." Nothing in the shape of organization needs and appreciates truth more than a railway corporation. The most effective and successful executive in any management has made more of his success by the use of his knowledge of the true and honest man than he has by too deep a study of the rascality and duplicity of the dishonest. This may sound like badinage, but investigation will verify this assertion. A knowledge of whom to trust is pre-eminently the basis of all executive work and management which bears the stamp of success. "*Rem acu tetigesti*" truth when it is said that all competent and discerning men prefer honesty with its efficiency and certainty of action to dishonesty with its doubtfulness and equivocality. From the standpoint of expediency, if even no higher motive is suggested, truth and honesty give more complete and perfect comfort to existence than the reverse. It may be true that nothing is impossible, but we maintain that the successful hiding of a lie in the guise of truth has been an impossible task to the most brilliant intellects ever created. Honesty is almost constantly associated with good sense and judgment. Dishonesty is, in a great many instances, the result of defective mentality. There is nothing, as a general thing, impossible in the performance of duty, but a duty neglected may partake of fraud, dishonesty, and criminality. The true line of duty of the Railway Surgeon, then, must consist in honest, effective knowledge of his function, along with the true, exact, and strict performance of the same. Experience and result have taught millions before us, and will teach millions yet to come, that duty, honesty, and truth are forces which most broadly and constantly rule the intellect of man, and that the highest success and happiness in life come through their effects and practice.

W. B. OUTTEN.

Chief Surgeon John E. Owens, of the Chicago & Northwestern Railway Company, says :

CHICAGO, Nov. 1, 1894.

CLARK BELL, Esq., Editor MEDICO-LEGAL JOURNAL, 57 Broadway, New York :

My Dear Sir :—Your communication of the 12th ult., referring to a short paper on "The True Line of Duty of the Railway Surgeon," received. I am fully in accord with your view of the proper relation of the surgeon or medical man to the cases of railway injuries which he may be called upon to treat. I have never considered it in any sense my duty to go beyond that of the surgeon or medical man. In the reports of my cases I have endeavored to be guided simply by the pathology of the particular case in hand and by the experience of myself and others as to the nature, progress, results, disability, temporary or permanent. In this way it has been my aim to give as honest and straightforward opinion as it was possible for me to give. I have never entered the field of the adjuster of claims, and feel sure that his duties and those of the surgeon and medical man are incompatible with each other ; nor have I ever encouraged our local or district surgeons to assume the duties of the adjuster, or in any such manner meddle with the cases.

Very truly yours,

JOHN E. OWENS.

THE TEXAS & PACIFIC RAILWAY CO.
OFFICE OF THE HOSPITAL.

MARSHALL, Texas, November 6, 1894.

CLARK BELL, Esq., New York, N. Y.:

Dear Sir:—On my return from a trip in Mexico I found two letters from you. One asking my views under the heading of "The True Line of Duty of the Railway Surgeon" in caring for and giving evidence of medical and surgical facts, and against his acting in any sense as either adjuster of claims or to aid in negotiations for settlements or any legal steps in the interest of the railway. Giving my views briefly, under the above heading, I will say that the surgeon's duty is to act solely as a professional man, *i. e.*, doing the best that can be done for sick or injured employes, and see that railway companies are not swindled or defrauded by unjust claims brought by employes or passengers. He should in no wise debase his profession by lending himself as a claim settler in the interest of the railway companies.

Regretting my inability to attend the meeting of the Society on the 15th of this month, I am, very respectfully,

Yours, etc.,

B. F. EADS, M. D.

DISCUSSION OF MR. CLARK BELL'S PAPER ON "THE TRUE FIELD OF
DUTY OF THE RAILWAY SURGEON."

By Dr. George Chaffee :

Mr. Bell's paper, like all of his papers, is ably written. The topic he has chosen for discussion is of great importance. Many railway surgeons do not know, or, if they do, they seem to forget, that they are only employed to do surgical and medico-legal work.

When the question of compensation arises the position is indeed delicate, and the man who is able to use common sense, or tact and good judgment, and do little talking, will serve his company well. When a railway surgeon assumes the *role* of attorney or adjuster of claims, his services should be dispensed with.

Mr. Bell's quotations from Lord Chief Justice Coleridge are very appropriate, indeed, and I trust that the teachings of these gentlemen will bear fruit. Oftentimes the railway surgeon may be tempted to step across the boundary line into the legal field. Don't do it. I can heartily endorse Mr. Bell's paper from first to last.

Dr. R. S. Harnden :

It has seemed to me that the railway surgeon is placed "between the devil and the deep sea." I do not mean to apply such a term to the lawyers and claim agents, but it is certainly very hard for him to steer clear of these two, and attend strictly to his duties. The railway surgeon should not, under any circumstances, become the claim agent, or assume the functions of the attorney in any case. He must not discuss the ques-

tion of claims, from a monetary standpoint, so far as it applies to the actual settlement. He should be only an advisor to his company, manager, or even the claim agent, from a medical standpoint. He alone may be able to determine some of the factors to be taken into consideration in settling the claim from a purely medical standpoint. I would like, in closing, to express my admiration of the paper just presented.

Dr. M. Cavana :

The drift of the paper was based upon the supposition that the railway surgeon was the surgeon of the family or party injured. This does not occur except in a small proportion of cases; hence, the question of professional secrecy would hardly apply to the general run of cases.

THE MEDICAL JURISPRUDENCE OF INSANITY.

HOSPITALS FOR THE INSANE AND THEIR TREATMENT (*Continued*).*

BY CLARK BELL, ESQ., HONORARY MEMBER BELGIUM SOCIETY
OF MENTAL MEDICINE, HONORARY MEMBER OF THE
MEDICO-LEGAL SOCIETY OF FRANCE.

VIEWS OF THE CHAIRMAN OF THE BOARD OF LUNACY, COMMISSION-
ERS OF PENNA.

COMMONWEALTH OF PENNSYLVANIA, COMMITTEE ON LUNACY.

1421 Chestnut Street, Phila., November 7, 1894.

CLARK BELL, ESQ.:

My Dear Sir:—In your letter of November 5, you ask a reply to the following:

I. Would it be better for the insane in a hospital if its physicians had nothing to do with the financial or business management, and would you favor such a change?

Answer. Yes; the professional duties appertaining to the care of patients in all state hospitals for the insane are quite sufficient to occupy the time and attention of the chief medical officer and his staff; I have urged this for years past in my annual reports to the Legislature.

II. Should the physician in charge of a state hospital for the insane be appointed by its board of managers, or how could the best service in such institution be otherwise secured?

Answer. By the board of managers, and the appointment should be made each year.

III. Should advanced scientific psychological and pathological studies and treatment be employed by the medical staff of a hospital for the insane and enforced by law?

Answer. Yes.

IV. How far can the inmates of an asylum be judiciously employed beneficially to themselves; and how can all the insane (except those physically incapacitated) best obtain the benefit of employment?

Answer. Each patient must be carefully considered, and that kind of work or occupation, outside or indoor, should be selected, which would be in a measure pleasurable, or at least adapted to the peculiarities of the individual; there ought to be some occupation for every patient, except those absolutely incapacitated.

Very truly yours,

THOMAS G. MORTON.

* Read before the Psychological Section Medico-Legal Society, November 12, 1894.
Read before the Medico-Legal Society, December meeting, 1894.



GROUP OF EMINENT BRITISH ALIENISTS.—ANNUAL MEETING PSYCHOLOGICAL ASSOCIATION, DUBLIN, IRELAND, 1894.

(36)	(35)	(29)	(28)	(25)	(24)	(18)	(17)	(11)	(10)	(5)		
(37)	(34)	(30)	(26)	(23)	(19)	(16)	(12)	(9)	(4)	(3)		
(40)	(38)	(33)	(31)	(27)	(22)	(20)	(15)	(13)	(8)	(6)	(2)	(1)
(41)		(32)				(21)	(14)		(7)			
1. Mrs. Rutherford.	11. Dr. Oswald.	21. Miss Norah Kenny.	31. Mrs. Charles Mercier.	41. Dr. Fletcher Beach.								
2. Dr. Clouston.	12. Dr. Lawless.	22. Dr. M. Lindsay.	32. Dr. Whitcomb.									
3. Dr. Law Wade.	13. Dr. Nicholson.	23. Dr. Andriezen.	33. Dr. Fletcher.									
4. Dr. McDovall.	14. Dr. Rutherford.	24. Dr. Keay.	34. Dr. O'Neill.									
5. Dr. McClaughey.	15. Mrs. Conolly Norman.	25. Dr. Donelan.	35. Dr. Geo. Robertson.									
6. Dr. Curwen.	16. Dr. L. Donaldson.	26. Dr. Charles Mereler.	36. Dr. Percy Smith.									
7. Dr. Calcott.	17. Dr. Bond.	27. Dr. Eleanor Lillian Fleury.	37. Dr. Redington.									
8. Mrs. Whitcomb.	18. Dr. Beveridge Spence.	28. Dr. James Kenny.	38. Miss Kenny.									
9. Dr. Oscar T. Woods.	19. Dr. Haek Tulke.	29. Dr. Gramshaw.	39. Dr. Carswell.									
10. Dr. Cullinan.	20. Dr. Conolly Norman.	30. M. J. Nolar.	40. D. Rambert.									

KEY TO GROUP OF BRITISH ALIENISTS AT DUBLIN MEETING BRITISH MEDICO-PSYCHOLOGICAL ASSOCIATION,

FURNISHED BY DR. HACK TUKE—TO THE EDITOR.

THE JOHNS HOPKINS HOSPITAL,

North Broadway, Baltimore, November 12, 1894.

CLARK BELL, ESQ., 57 Broadway, New York:

Dear Sir:—Your letter has just reached me. It is of course too late for me to reply with any expectation that you will get it in time for the meeting this evening. To show my good will, however, I would say:—

1. It would undoubtedly be better and easier for the superintendent of a hospital for the insane if he could be relieved from all business and administrative details; but I am not equally sure that it would be as well for the hospital. As matters are at present in many States, I fear it would be impossible to bring about such a division of medical and administrative duties. The institutions in this country which have attempted it have not, to say the least, excelled the others in excellence of medical work. The responsibility of the business management of an institution does not necessarily preclude a physician from scientific work. Witness, for example, the large private sanitariums and private hospitals owned and personally conducted by many medical men, in addition to the responsibilities of a large consultation or general practice.

2. A physician in charge of a State hospital for the insane should be appointed by the board of managers or trustees charged with the responsibility of its management. To compel such a board to accept a man appointed by an outside power and to hold the board responsible for his acts, is unjust.

3. Every state, by law and by public sentiment, should insist that insane patients receive the most enlightened and advanced care.

4. No general rule can be laid down for the employment of insane patients. Every institution should furnish some sort of occupation for at least 65 per cent. of its patients, but the character of the occupation must depend largely upon the character of the patients and the sorts of occupation which are available. A sensible, judicious superintendent will be governed by his surroundings, and will be able to devise occupations which are suited to his special needs. The occupations adopted cannot be uniform, and no general rule can be laid down as to how many patients should be at work. If the institution is wholly filled with chronic cases, nearly all can be interested in some form of employment. If by recent cases a much smaller number can be usefully employed.

Very truly yours,

HENRY M. HURD, Superintendent.

NEW HAMPSHIRE ASYLUM.

Concord, N. H., Oct. 12, 1894.

CLARK BELL, M. D.:

Dear Sir:—Replying to your inquiry of October 9, I would say that it is difficult to establish rules arbitrarily which will cover all State hospitals alike. The institutions differ as to size, and the conditions in some are very different from what they are in others. I can conceive that the management of a very large institution, having an insane population of 2000 patients or over, must be quite a little different from a smaller institution having only three or four hundred.

I should say in answer to your questions, first, that in an institution of ordinary size, it seems to me eminently proper that the general superintendent should be conversant with the financial and business management, should have a directing influence with these departments, though it might not be necessary that he should do all the detail work.

It seems to me that the expenditure of all money, the direction of all the permanent improvements, the construction of all new work must come under his direction, as necessarily all these matters concern the general welfare of patients in the institution.

No one can understand so well the immediate wants of the institution as the medical superintendent. While, therefore, he can detail work to a steward or other subordinate officers, it still would seem important that he should have a directing influence over it all.

Second: I see no reason why the board of managers of an institution should not be competent to appoint their own superintendent.

Third: Advanced scientific psychological and pathological studies and treatment certainly ought to be adopted by the medical staff. As to enforcement of the same by law, that would depend entirely upon whether the State provided funds for the proper carrying out of such work.

Pathological work must depend upon the character of the institution, and the number of patients resident therein. While autopsies are extremely valuable and important, and should be made as often as practicable, still, in some institutions where the patients are semi-private, it would be absolutely impossible to insist upon an autopsy in all cases.

Undoubtedly the large metropolitan hospitals nearer the large centers, where there are many pauper insane without relatives and friends, or where the friends are easily accessible, in such an institution the pathological work can be carried out to better advantage than in the smaller institutions in the agricultural districts.

So, again, it is absolutely impossible to establish a law which can be arbitrarily applied to all cases.

Fourth: As to what degree the inmates of an asylum can be judiciously employed must depend largely upon the character of the patients in the institution.

There is no question but that occupation, mental and manual, is important as a matter of treatment. The exact degree to which it can be carried must vary somewhat according to the social status of the patient.

Whenever a patient can be induced to occupy himself in any kind of work suited to his condition of life, I should say that he should be so employed. The employment of all the insane, except the physically incapacitated, depends upon the resources possessed by the institution.

To employ all the insane in the different directions to which they are especially adapted, must necessitate the employment of suitable attendants to supervise and direct them in their various employments, prepare places for them to work in, and intelligently supervise generally, which necessarily means the outlay of some money.

If the State is willing to provide workshops where all the various industries can be employed, then I should say that the best results can be obtained.

Yours truly,

C. P. BANCROFT, Superintendent.

VIEWS OF DR. BUTTOLPH, LATE SUPERINTENDENT NEW JERSEY STATE HOSPITAL, AT MORRIS PLAINS.

SHORT HILLS, New Jersey, September 29, 1894.

CLARK BELL, ESQ.:

My Dear Sir:—Your favor of the 26th, is received, referring first to the “arraignment of the management of the insane in the American Hospitals, by Dr. S. Weir Mitchell and some of the leading neurologists of the Eastern and Middle States, in an address before the American Psychological Society at its last meeting;” and second, to questions to be answered relating to the organization and the general and special management of the insane in institutions for their care and treatment.

In regard to the first topic, I would say, that I have read, with interest, the brilliant address of Dr. Mitchell referred to, and while finding many suggestions and criticisms to approve, I nevertheless think that its general effects, unless in a degree counteracted, will be to discredit the medical men engaged in the management of this class of institutions to a most unfortunate, if not, indeed, unwarranted extent, to the general profession and people of the several states. This is my present impression, though I will not now allude to facts and reasons for its justification. I will state, however, that while Dr. Mitchell, and others, whose language he quotes, may have acquired just distinction in the department of neurology, to which they have given special attention, yet, the question will arise in many minds as to whether all or many or either of them have had such practical knowledge of insanity and of the management of institutions for the insane as would enable them to judge rightly of the men and the methods best adapted to secure all of the objects intended. It would, in fact, be a matter of rare occurrence if men engaged in the treatment of nervous complaints, of the more wealthy classes, could readily engage in carrying out a system of control and management in large institutions containing subjects in all stages of mental disorders, as it regards duration of disease—from all ranks of society, including the affluent, indigent, and pauper classes, whose welfare and happiness for years or for life depended on the choice of men and methods best adapted to accomplish all the objects in view. While the treatment of recent and curable cases would be a leading purpose, yet, for many reasons, the presence and action of a single administrative head—or medical superintendent, as such officer has been fitly called—in reference to duties not strictly medical might be of the greatest importance to the general success of the institution.

In reference to one of the matters alluded to by Dr. Mitchell as highly important, that of having hospitals for the insane located near large cities, it may be stated, that it would often be difficult or impossible to obtain in such localities proper sites for single large or many associated small buildings for the purpose with the requisite amount of land for farm, garden and pleasure grounds, on such terms as the public authorities could accept, having due reference to economical considerations. Aside from this, the freedom of patients in near proximity to the residents of a city would inevitably be much abridged thereby, resulting in friction and complaint in equal measure on the part of both. While

there might be advantages to the medical officers of institutions to be in closer touch with the outside profession than is now possible or usual, on account of the remote situation of institutions, yet the proposal to have them engage, to any great extent, in consultation or other medical practice in action, would be, in a degree, questionable. When it is understood that the chief medical officer—or superintendent, as he is termed, in view of the character of his duties—has, and should have, in a large household of insane patients, many administrative duties to perform, aside from attention to medical treatment of patients, which need not, with proper assistants, take all his time. Being the recognized head of the establishment, he should live within easy call, so as to be cognizant of details, even of minor importance, when they are part of a general system of guidance and control, and to answer inquiries in regard to the organization and management of institutions. In reply to your first question, my answer is:—

I would not. Even *one poor head* would be better than *two good ones*.

To the second question, I reply:—

By the Board of Managers—who, in my opinion, could not exercise proper control over officers otherwise appointed.

To the third I say:—

Not under existing circumstances, as there are comparatively few men engaged in any branch of the profession, including neurologists, who would be qualified to make such investigations specially advantageous in the diagnosis and treatment of insanity. Ignoring other methods of inquiry, pathologists of the past and present period persist in efforts to ascertain the *mental functions* of the brain, as a whole and of its several parts—*which is now the most important of all inquiries*,—by examinations confined exclusively to the brains of *dead* subjects which are of little utility, as the *structure* of the brain in either a state of health or disease does not reveal its *mental function*, and if the system is continued as heretofore, at least five thousand years will be required to accomplish it.

And to the fourth I reply:—

The number employed would vary with the character and previous habits of the insane in different institutions. The medical superintendent or chief medical officer should devise employments suitable for both sexes, and his views should be carried out by subordinate officers, attendants and assistants, in every department under him.

Respectfully yours,

H. A. BUTTOLPH.

VIEWS OF DR. H. M. BANNISTER.

1110 Columbus Mem. B'ld'g, Chicago, Dec. 7, 1894.

CLARK BELL, ESQ.:

Dear Sir:—Yours of October 10 was handed me yesterday, having been missent.

I believe there should be no divided authority in an asylum for the insane and that it should be under medical control; under the medical superintendent, or the next in rank among the physicians in case of his

temporary absence. Any other than medical control I think has a tendency to degrade the institution, as no one can appreciate its purposes and carry them out as well as an educated medical man. If this is not the case, and there is any question of authority, there is apt to be a clashing between the business and medical officers that can only be disastrous.

Some superintendents under our present system of appointments have perhaps shown a tendency to devote themselves more to the business management than to their professional duties, but there is no necessity of this. In a well organized institution a medical superintendent ought to be able to oversee all business matters without preventing his acting also as a scientific physician, if he has any taste or capacity in that direction. That this is true is shown by many superintendents in this country and elsewhere.

The best method of appointment of superintendents would be by some kind of civil service regulations, taking fully into consideration the scientific reputation as shown by writings, etc., and the previous experience in the direct care of the insane as an assistant physician. A mere competitive examination on general medical subjects might put a fresh graduate over an alienist of world-wide reputation and experience, as simply a superintendent would possibly favor unfit political appointees.

The asylums ought to fully meet the demands of advanced scientific medicine in their treatment, but I do not know that this can be enforced by law except by prohibiting the appointment of unfit men for political or other reasons. If unambitious, indolent, and incapable men are put in charge no legal regulation could mend matters. Anything that would tend to degrade the medical officer or lower the medical *esprit de corps* would also have a damaging tendency on the scientific standing and results of the asylum.

At least sixty or seventy per cent. of the ordinary asylum patients can be employed profitably to themselves, for a longer or shorter period of the day. Where this has not been already the rule, it may take time to work up to it, but it can be done if the physicians exert themselves to bring it about. The attendants and other employees will have to be educated and overseen, and there will have to be careful individual consideration of many cases, but employment can be made a very valuable part of the individual treatment. The chronic and demented insane give the least difficulty in this regard, but the more acute cases require careful individual study on the part of their physicians and it would be impossible to give here details as to methods of employment. Each case has to be more or less a study by itself.

I send these answers to your questions assuming that you still wish for them. If not, at least there is no harm done by my replying. I am,

Very respectfully,

H. M. BANNISTER,
Late Senior Asst. Physician at Kankakee, Ill.

EASTERN WASHINGTON HOSPITAL FOR THE INSANE.

MEDICAL LAKE, Washington, Nov. 8, 1894.

CLARK BELL, ESQ., MEDICO-LEGAL JOURNAL, 57 Broadway, N. Y.:

My Dear Sir:—Replying to your letter of October 10, I will answer your interrogatories in the order given.

I. No. Divorce the general business management from the medical and a clash of authority will occur with unpleasant frequency. There must be an official head, and no one is so well qualified for that position as a medical man possessing a faculty for business. He is best able to urge the adoption of appliances and procedures necessary for successful treatment, and to discourage the purchase or adoption of those that are useless or excessively expensive. It would be rare, indeed, for a layman to exhibit the same discernment in this line. The idea that a good physician cannot possess, or ought not to display, business ability, is absurd.

II. There is much in favor of nominations for the superintendency being made by medical societies and much against it. The theory is excellent but the practice is not without flaws. Not the least among the numerous objections is that the appointing power usually takes care that the list of nominations includes the name of the person it especially desires to appoint.

The appointing power vested in a well-constituted board of managers, free from political entanglement, is, in my opinion, more likely to secure efficient and harmonious service than any system yet suggested.

III. It should, but not to the extent advocated in Dr. Mitchell's paper. Some of his suggestions seem exceedingly visionary, and if put into practice would entail expenditures too excessive to be borne by taxpayers. Even in a modified form they could only apply to institutions situated in or near medical educational centers. Many states have no such advantages.

IV. From 60 to 75 per cent. can be employed in some way or other. The number will vary with the diversity of employment furnished. In small institutions it is impossible to engage in industries sufficiently numerous to meet the inclinations and hobbies of all classes of the insane. Many will work at one thing and not at another. The refusal to work on the part of some leads others to refuse. The "contagion of example" is as effective in idleness as in activity.

I have confined my remarks mainly to the questions asked, and I now wish to add that while I cannot agree with all Dr. Mitchell advocates, I must admit his paper bristles with many valuable suggestions, and his criticisms, though cutting, are, in the main, just. Much good will follow its publication. Very truly yours,

JOHN M. SEMPLE, M. D., Superintendent.

VIEWS OF DR. D. R. WALLACE, LATE SUPERINTENDENT TEXAS STATE HOSPITAL FOR INSANE.

WACO, TEXAS, Oct. 1, 1894.

I. Would it be better for the insane in a hospital if its physician had nothing to do with the financial or business management, and would you favor such a change?

But one side to this question from my standpoint. No physician can bring himself to bear upon attendants and patients in a lunatic hospital so as to secure the best services from those, and effect best curative results upon these, unless he *bosses the ranch*. No physician is fit to look after the welfare of the insane unless a man of administrative ability, and if he has this he will be a good organizer. All the departments of an asylum properly organized, it will take little of his time to superintend the whole, and this is compensated a hundred fold by the good secured to the whole establishment.

II. Should the physician in charge of a state hospital for the insane be appointed by its board of managers or how could the best service in such institution be otherwise secured?

Thought some of this. It stands, in my mind, about thus: Upon the whole there is less objection to board of managers electing. The objection to their doing so is this: The board and superintendent get up a sort of mutual admiration society, and the former are easily lead to think the latter is just the man, and all psychological wisdom will die with him. Result: Many old roosters, that have not progressed a hair's breadth in a quarter of a century, are kept in position when they really are not fit for a backwoods' *granny*. If the governor appoints he appoints political friends, of course. Gov. James Stephen Hogg says he has examined the whole matter—everybody knows he is omniscient—and one doctor is as good as another. My observation is: It does no harm to change superintendents in lunatic hospitals occasionally, otherwise they get careless and indifferent, do not study—get into *ruts*. When a superintendent has impressed himself and his methods thoroughly upon an institution, it may be, and frequently is, well for another to follow and adopt all that is good in his predecessor, and add his own quota. This supposes, of course, that they are, as they should be, men of some personality to impart to an institution.

III. Should advanced scientific psychological and pathological studies and treatment be introduced and employed by the medical staff of a hospital for the insane, and enforced by law?

This question, I presume, I do not understand. If I do—might as well ask: Shall a medical staff of a hospital for the insane use *science* or *no science*—skill or ignorance? Understand, I do not class with science psychological or other unverified and, perhaps, unverifiable *theory* and *hypotheses*.

IV. How far can the inmates of an asylum be judiciously employed beneficially to themselves; and how can all the insane (except those physically incapacitated) best obtain the benefit of employment?

Too big a question to be treated in a few words. Believe in employment and occupation. *Let them do what they do affect* and do not force them to do what is distasteful, is about the whole of it, as embodied in my twelve years' experience under the same roof with the insane.

D. R. WALLACE, M. D., LL. D.

VIEWS OF DR. F. A. NORBURY, PROF. OF NERVOUS AND MENTAL DISEASES, COLL. PHYSICIAN AND SURGEON OF ST. LOUIS, LATE ASS. SUPT. ILLINOIS CENTRAL HOSPITAL FOR INSANE.

JACKSONVILLE, ILL., Oct. 1, 1894.

CLARK BELL, ESQ., New York:

Dear Sir:—Dr. Mitchell's arraignment of the management of American Insane Hospitals, was both opportune and justifiable. Opportune, as he had the men before him who could profit by his words of advice; justifiable, because political interference in their management of hospitals has, like Tammany's influence in New York, ruthlessly thrown aside the good of the cause for the greed of office.

I believe it would be better for the insane in a hospital if its physician had nothing to do with the financial or business management. Experience has shown me that the details of domestic management of the works, under the physician's care, are alone sufficient to distract his attention too much from the more scientific medical care and treatment. The physician should not be burdened with financial cares, which in themselves are sufficient to absorb the whole time and attention of a man experienced and trained for this kind of work.

Your question in regard to the appointment of the physician in charge, is opportune and should be thoroughly reviewed.

I consider the appointment by competitive examination, as practiced in the U. S. Army and Navy Medical Departments, as the only truly satisfactory method, destined to promote the scientific standing and worth of the officers in insane hospital management.

Boards of Managers are usually made up of politicians, and many who want party success rather than the progress of scientific alienism. A party spoilsman may make a good superintendent, but the chances are not in his favor.

Question three.—Yes; I believe that each physician appointed to the medical staff of a hospital, should be required at intervals of three or five years to pass an examination on psychological medicine, pathology and medical progress. This should be enforced by law. A medical corps worthy of the name of alienists could thus be secured, that would become a power in the state for advanced thought, and would mould public opinion regarding the prevention of insanity, which is the only true way of ameliorating this sociological problem which, year by year, grows instead of diminishes.

Question four.—The inmates of an asylum should be employed, and I think "truck farming" the best and most satisfactory open air employment for them.

Under proper regulations they do well in such work. My experience justifies me in saying that if I had it in my power I would supply, as far as possible, such work for all, the epileptics included. More recover, more are improved, and more chronic cases are made comfortable by employment than by inactivity and continuous hospital confinement. Shops for employment, and the introduction of the gymnasium for compulsory exercise, would take the place in winter of the truck farming.

Out-door athletics, base-ball, tennis, croquet, bicycle-riding, &c., are adjuncts in treatment, which many of the older hospital physicians look

down upon, but which, in this athletic age, are powers destined to be of great service.

Five years residence as a physician on the medical staff of an insane hospital has shown me that the future of American alienism depends on the obliteration of political interference, introduction of civil service rules pertaining to appointment, and tenure of office; the cultivation of the clinical and pathological methods of European hospitals, and the increase of the number of physicians on the medical staff. More encouragement to them, financial and otherwise, to remain in the work, to develop it, and the broadening of the medical aspect of the management in general. Respectfully,

FRANK PARSONS NORBURY, M. D.,

Late Assistant Physician Illinois Central Hospital for the Insane, Prof. of Mental and Nervous Diseases, College of Physicians and Surgeons, St. Louis, Managing Editor of "The Medical Fortnightly," St. Louis.

IOWA HOSPITAL FOR THE INSANE,

CLARINDA, Iowa, October 2d, 1894.

CLARK BELL, ESQ., EDITOR N. Y. MEDICO-LEGAL JOURNAL:—

My Dear Sir:—In compliance with your request, I will endeavor to answer your questions in as brief a form as possible.

First. I do not believe that the medical superintendent of an insane hospital, should be burdened by the details of business management. When such is the case I think it will be found due to the fact that the superintendent has assumed such duties, to the exclusion of scientific work, from choice rather than necessity. The man and not the system is at fault in such instances. I regard the medical, moral and dietetic treatment of the insane so closely interwoven, that it is improper to take from the chief medical officer his authority to control the general conduct of the hospital. He should exercise only a general supervision over the financial affairs, the details to be in the hands of a competent steward.

Second. To divorce politics from insane hospitals, and other similar institutions, is positively essential to good management. This should be done by the appointment of non-partisan boards of trustees, who should select the medical officers from the ranks of men who, beside being well qualified scientifically, have had practical experience in hospital work. When civil service reform has reformed its own system so as to be free from politics, it may offer a better solution to this problem.

Third. Most assuredly advanced methods of treatment, scientific and pathological studies, should be carried on in insane hospitals. In large hospitals a pathologist should be a member of the staff; but in the thinly settled states, a state pathologist should be maintained, possibly in connection with the state university.

Fourth. In answering this question, I wish to say that here is the most fertile field for reform and advanced methods in hospital management. Every patient who is not physically incapacitated should be employed at some form of labor, or exercise, a fair proportion of the time. Demented patients should be trained and drilled in both mind and body, and every means taken to awaken the feeble mental spark which is in danger of

being forever extinguished. Patients should be given employment, and when possible the spirit of self-help and independence should be fostered by proper remuneration for labor performed. Many hospitals are doing this now, and many more are developing such methods of treatment as rapidly as their resources allow. In conclusion, I believe that the insane hospitals have advanced steadily in the past decade, are advancing daily, and will advance more rapidly as the public become alive to the great work being performed by such institutions.

The remedy for existing evils lies not so much in remodeling the medical officers of hospitals as in the education of the public. Those men who are devoting their talents, energies and love, to the care of the insane, deserve commendation and aid from their brother neurologists, rather than captious criticism and undignified public arraignment.

Very respectfully,

FRANK C. HOYT, M. D.,

Superintendent.

PROTESTANT HOSPITAL FOR THE INSANE.

MONTREAL, QUE., Oct. 23, 1894.

My Dear Sir:—In reply to your circular of the 10th inst. I would beg to say, that, in my opinion, two of the greatest drawbacks to the securing of the most beneficial and efficient management in our hospitals for the insane are the introduction of politics into the appointment of the staff, and the lack of means to make improvements. There are many superintendents who, for years, have contemplated much needed reforms and advances, but who are debarred from putting their plans into execution through want of the necessary funds. I dwell strongly on the latter point, as, in the case of our own institution, which is largely dependent on the bequests of the charitable, there are so many things that one would like to do and try for the betterment of the inmates, had we but the money required therefor.

Now, as regards your 1st question: Yes. In this respect the Ontario institutions are admirably organized. The medical superintendent is supreme, but is freed from nearly all business details, and has merely a nominal supervision thereof. The financial and business affairs are managed by a bursar, who, on any doubtful point, consults with the (medical) superintendent.

In answer to your 2d question: Medical superintendents should be appointed by promotion from among the junior members of the staff. It is but too often the case that all ambition to excel in their chosen specialty is crushed out of the juniors by the knowledge that, no matter how meritorious their work may be, their claim to promotion will not be recognized, but passed over in favor of some political appointee from the outside world. In the appointment of the juniors I would, personally, favor a competitive examination. It makes little difference by whom they are appointed, provided that those who have the appointing be not biased by political or other unworthy interests, but use all pains to select men only on the basis of their professional attainments and executive ability—men thoroughly trained in modern psychological and pathological methods—

men with the ambition to do good scientific work and research. Needless to say that to secure and keep such men, salaries, from the superintendent down, should be largely increased above what is now usually paid to them.

To the 3d question I reply: The *most* advanced scientific methods of treatment should undoubtedly be employed, but far too frequently progress in these directions is thwarted by lack of funds to obtain the necessary appliances and equipment. I am very doubtful whether such methods of treatment could be enforced by law. If the right men are appointed on the staff, and adequate means given them to pursue their studies and researches, the looked-for results will not be found wanting.

Replying to question 4: In this respect each patient received must be made a special study. In selecting occupation for the insane we must never lose sight of the fact that we are dealing with sick people, many of whom are quite unfit for more than the lightest kind of work, some for none at all. When, however, physically built up, our constant aim should be to induce them to engage in some employment, essaying to select such as will best suit the strength and tastes of each individual. Again crops up the burning question of means, but where these admit there should be in every hospital for the insane (in addition to well-regulated outdoor employment) large, airy, well-lighted workshops, with facilities for working at a multiplicity of occupations, and skilled attendants to instruct and look after the inmates when at work. True, there might be some direct loss through a waste of materials, in the hands of unskilled workmen, but the question of loss or gain to the institution should be sunk in the consideration of benefit to the patient.

In all cases the amount and kind of work to be done requires the most careful consideration. If we take a patient from the agricultural classes and employ him on a farm, his work is done in a more or less automatic way. If, however, we can find out that the same patient has a taste for carpentering, wood-turning, painting, book-binding, etc., and can induce him to engage in such employment, he has something to learn, and in the learning his thoughts are distracted from his morbid fancies. We have created a new interest in him, and probably made no small advance toward a cure.

Very truly yours,

T. J. W. BURGESS.

GREENMONT, Oct. 23, 1894.

CLARK BELL, ESQ.:

Dear Sir:—Your favor of the 26th ult., requesting my opinion on certain points, was duly received.

Without considering the question whether the arraignment by Dr. S. Weir Mitchell of the American Hospitals for the Insane was really and altogether well founded or not, I shall confine myself to the expression of my views on the four questions especially propounded.

I. Would it be better for the insane in a hospital if the physician had nothing to do with the financial and business management, and would you favor such a change?

It would, in my opinion, be better to relieve the medical head of hospitals for the insane from all the responsibility of the financial and busi-

ness management. That is, there should be a competent officer or officers who should be responsible for the transaction of such business matters. But the medical head should have supervisory direction; as of the things that are required, and of the quantity and quality of the supplies. He should also have the supreme directing power over such business matters connected with the hospital as immediately affect the welfare of the patients, as, for instance, farming or gardening, in which patients may be employed with benefit to themselves.

II. Should a physician in charge of a state hospital for the insane be appointed by its board of management, or how could the best medical service in such institution be otherwise secured?

This question is not an easy one to answer. In the first instance it would seem eminently proper that the board of managers should continue to have the power to appoint both the medical and business heads of the hospital, as being the body of men most intimately connected with its interests, and in order that the greater harmony might exist between the managers and the medical head. But, on the other hand, it must be taken into consideration that the managers are not likely to be competent judges of the qualifications required of a medical head, and also that they themselves are appointed by a higher power for a limited period of time only, and so that a changed board of managers may ultimately be out of harmony with the medical head. Moreover, it often happens that boards of managers are not statesmen, in any sense of the word, but mere political appointees. In the State of Ohio, for instance, it has long been the habit of political boards of managers to change the superintendents of hospitals for the insane with every change of the political status of the boards of managers.

For these reasons, then, it would seem best that the medical heads of our state hospitals for the insane should be appointed by some competent body of medical men, after such examination and other evidences of competency as may be required for the formation of a sound opinion. This appointing power might, perhaps, be advantageously vested in a committee appointed by one or more of the state medical societies, and under such regulations regarding the evidences of competency as might be found advisable. The same medical board might also be made the judges of the continued competency of the medical heads of the hospitals, with the power of removal for cause.

III. Should advanced scientific, psychological and pathological studies and treatment be introduced and employed by the medical staff of a hospital for the insane, and enforced by law?

A hospital staff should be composed of well educated, scientific, industrious men; and these men should have sufficient time, books, journals and material for the work that they are competent to do. These being given, there will be no need for a law intended to enforce study or research.

IV. How far can the inmates of asylums be judiciously employed beneficially to themselves; and how can all the insane (except those physically incapacitated) best obtain the benefit of employment?

This question cannot be answered in a general way. It must be determined specifically for each separate hospital, by the medical men in

charge, with the understanding that employment is universally conceded to be a useful remedial measure in the treatment of many of the insane, and that employment that has a useful object or end is of the greatest advantage for the most part and in most cases.

I am yours very truly

RALPH L. PARSONS.

ILLINOIS EASTERN HOSPITAL FOR THE INSANE.

KANKAKEE, ILL., Oct. 18, 1894.

MR. CLARK BELL:

Dear Sir:—Replying to your circular letter of Sept. 26th, I would say that I have read Dr. S. Weir Mitchell's address, as published in the *Journal of Nervous and Mental Diseases*, and while I think it contains many excellent suggestions and much valuable stimulus to that part of the medical profession engaged in the work of the care and treatment of the insane, I think *it is also conspicuous for its lack of real knowledge of the conditions prevailing in hospitals for insane throughout the country.* Dr. Mitchell has obtained his information from those who rarely visit hospitals for the insane, and who judge purely from the standpoint of the neurologist. There are, in my opinion, many things of more importance in the management of the insane than medication. The purely scientific observer is very likely, also, to overrate the importance of fine distinctions in diagnosis and of medical treatment.

In answer to your first question, I would say that I think it no more possible for an institution to succeed well with two heads than for a human body to do so. Indeed, I look upon the human body as the best model upon which to construct a plan of administration of an institution. If the superintendent of an institution could be relieved of the business management, without converting the institution into a two-headed monstrosity, I think it would be desirable. I have seen it thoroughly tried, however, and I know from personal observation and experience that the system of separate heads for the medical and business departments of an institution is not only an utter failure, but a source of constant discord and mal-administration.

I think the physician in charge of a state hospital for insane should be appointed by its board of managers, or trustees, under all circumstances. This secures harmony in the administration.

In answering your third question, I would point out the fact that the eminent medical gentleman on whom Dr. Mitchell relied for his information, from this part of the United States, was evidently unaware of the fact that a pathological laboratory, well-equipped with apparatus, was in actual operation in this institution, and under the supervision of a competent pathologist. Moreover, he seems to have been unaware that a regular course of study was in operation in this institution, not only participated in by the staff, but open to any one interested in the subject. Many of the other things which Dr. Mitchell

suggested as important were in actual operation here at the time, and no credit whatever was given for them, strictures being laid upon supposed conditions, instead of actual ones. I have no doubt that this was true in many other cases, for I know of other institutions, even in the West, where good scientific work is going on. Advanced psychological and pathological studies aid greatly not only in maintaining a high professional tone, but in the more practical work of the institution, and I think should be introduced in every institution having five hundred patients. I know of no good reason why the study of five hundred patients should not be as useful in adding to the sum of human knowledge in America as in Europe.

So far as the employment of inmates of hospitals or asylums is concerned, it is not profitable from a pecuniary point of view, but is exceedingly so from the point of view of the health and restoration of the inmates. It may be secured by utilizing patients in carpenter work, painting or other trades, by which the physical condition of the institution is maintained, but better in gardening or some out-of-door work in the summer. This institution has work-shops, both for men and women, and a considerable number of patients are employed in manufacturing and repairing, to their manifest advantage. However, there is a large number of patients which we have so far been unable to employ. During the past summer we utilized some 400 in the making of a park, and succeeded in numerous instances in getting those to work who had been incorrigible in this respect, both on the wards and in the shops. Considerable can be accomplished by holding out the inducements of tobacco or special privileges, and by the examples of others.

This institution, and I know the same to be true of many others, tries to keep itself in touch with the best work going on in the fields of neurology and psychiatry in Europe and America, and so far as possible to utilize the information obtained. Of course, all state institutions are more or less hampered by political thralldom, and a desire to make good financial showings for the administrations which they represent. I think one of the most important steps toward good hospital administration is that they be taken out of politics entirely, and placed in the care of boards of trustees, composed of men of uprightness, intelligence, and of positions in life so assured as to be a guarantee of the integrity and high philanthropy of the institutions. Yours respectfully,

CLARKE GAPEN, Superintendent.

1331 Main St., Buffalo, N. Y.

CLARK BELL, ESQ.:

My Dear Sir:—Many thanks for your invitation to express my opinion in regard to the matter of government of our State hospitals for the insane, and though I have resigned my position as assistant physician at the Danville (Pa.) hospital, I think my experience of five years among the insane will warrant my expression of opinion in the matter.

I. As to whether a physician should be an autocrat in his position of superintendent, depends largely on the character of the man. In a number of our states politics, to a great extent, control the appointments to

such positions and the results are in many cases disastrous to either the business or medical branches, and in the majority to the latter. It seems to me that, all things being considered, a business head and a medical head would be by far the preferable plan. Let the superintendent have the right to have what demands he may make for the proper conduct of his work granted without delay, and if he be the right man for his position the requests will be reasonable and no more. A superintendent should see his patients at least every other day and more often if necessary; should know his attendants well, the conduction of the wards, and above all the condition both physical and mental of the inmates. In addition to this he must have his time for recreation and study, and I cannot see how it is possible for a man to do all this in a hospital of a thousand patients, and, in addition, care for each business detail of a farm of several hundred acres, and the innumerable items connected with it.

Very few men can manage a pig-sty or a wheat field, and at the same time be successful alienists. There are but few medical men who are conversant with farms, engineering and the many details of the outside work of an insane hospital, and at the same time be studious and up-to-date alienists. The ordinary day does not provide time enough for perfection in such varied pursuits. Moreover, if the superintendent of an institution is inclined to be small or mean in his business management, the advancement of the hospital is at once checked and it becomes the lunatic asylum of fifty years ago, while the staff, employees and all concerned become atrophied in every way.

II. I am strongly of the opinion that the selection of not only the superintendent but of all officers connected with an institution should be made by the board of trustees or a committee selected from them, and I am inclined to believe that before permanent appointments are made a certain period of probationary service should be required. Politics, to my mind, should never enter into the question of appointments in insane hospitals, for constant changes, as are demanded in some states where the institutions are "political plums," are certainly extremely detrimental to the success of proper administration.

To sum it up briefly. Let the trustees make appointments and make them (the trustees) responsible for the proper conduct of the hospital.

III. As but comparatively few of our hospitals for the insane make any *systematic* study in psychology or pathology, I think a physician appointed on every hospital staff, whose duty should be to conduct carefully and systematically and as completely as possible such study and research as the institution affords, without being obliged to perform any other duties.

Each State should, every year, devote a liberal amount to each of its hospitals to carry on this work. Reports of labors in this direction should be made each year.

Unless, however, as you ask, such work is made compulsory by law, I am afraid few of our hospitals would pay much attention to it.

A three or four thousand dollar morgue, merely to be looked at as a handsome building, but absolutely devoid of apparatus with which to

conduct a decent post-mortem examination, is a delusion and not an utter waste of money. There is only a minimum of this work done in our hospitals and the mistake should be rectified without delay.

IV. In regard to the employment of the insane, I think without doubt that all those who are able physically, and whose delusions do not make it dangerous to those about them, should be encouraged to work. For an insane man there is no better remedy than a shovel and wheelbarrow. I do not believe in driving an insane person to work, and I made it a rule never to do so, but I found very often that if taken to where others were at work, in a few days they would profit by example and soon be interested and even anxious to occupy themselves.

It is difficult to suggest employment for the insane as a class, for the pursuits of those confined in our hospitals vary to a very great extent, and they, of course, would be more interested in the business which they had pursued before admission.

Farm work, work in taking care of the grounds, the greenhouses, laundry, etc., all furnish means of profitable employment for our insane, and in addition to these accommodations, which every hospital has, shops of various kinds could be erected which would be profitable to both inmates and institution.

Every hospital should be provided with suitable conveyances and horses to entertain patients; in summer picnics are always enjoyed, and where the opportunity presents itself boat-rides can be indulged in by a certain class with perfect safety. To sum up in a few words: Give the inmates of our insane hospitals all the exercise and enjoyment possible and more beneficial results will follow than with the present state-prison rule of some of our hospitals.

Yours very truly,

G. R. TROWBRIDGE,

Formerly Asst. Phys. State Insane Hospital, Danville, Pa.

Dr. Carlos MacDonald, President of the State Commission in Lunacy for New York, replies as follows:

STATE OF NEW YORK, STATE COMMISSION IN LUNACY,
ALBANY, November 2, 1894.

CLARK BELL, ESQ., Editor Medico-Legal Journal, New York:—

Dear Sir:—In reply to your letter of October 24th, I send you by this post, under separate cover, a re-print of a paper recently published by me which contains all the answer I would make at this time to Dr. Weir Mitchell's criticisms, so far as they may properly apply to the New York State Hospital for insane.

I am, very truly yours,

CARLOS F. MACDONALD.

The very able paper which he enclosed to me is entitled "The practical Workings of the New Laws for the State Care of the Insane"—an elaborate brochure of 43 pages, quite too

long for the scope of my periodical. I take pleasure in submitting a few extracts therefrom as pertinent to the pending discussion. Among the reforms adopted by the State Lunacy Commissioners of New York, I quote the following :

A large increase in the amount of reading matter supplied to patients, and a marked extension of the facilities for amusements and diversion and for the industrial occupation of patients ; also for an increased ratio of attendants to patients, the establishment of attendants' homes at several of the hospitals, and a better rate of compensation to attendants ; also the introduction of women attendants in the men's convalescent wards and in the ward dining-rooms for men ; the introduction of spray baths, especially for the bathing of filthy patients ; the abolition of airing courts or inclosed exercise yards, thus affording patients a larger degree of freedom than heretofore ; the complete abolition of all mechanical restraint in the management of the insane, except in one or two hospitals where there is still a tendency to cling to old methods which are now nearly everywhere regarded as obsolete ; the establishment of an efficient system of night service of attendants in all the public hospitals for the insane ; the general adoption in the hospitals, both public and private, of a uniform dress for attendants' wear ; the establishment of infirmary or hospital wards, under the charge of a hospital attendant skilled in nursing the sick, for patients who are sufficiently ill to require treatment in bed.

The adoption of an order by the commission providing for the appointment of a general medical superintendent for the Kings County lunatic asylums, who shall have power to make rules and regulations for the government of the asylums, appoint and discharge all employees, regulate the dietary, make ordinary repairs, etc. This order was appealed from by the local board, but the higher courts sustained it, and its effect has been to remove the immediate management of the Kings County asylums from partisan influences which have hitherto been so detrimental to these institutions, and to generally improve the standard of care afforded to their inmates.

Provision for the clinical teaching of insanity in hospitals for the insane by the admission to the wards thereof of students of medical colleges situated in their vicinity, as well as of practicing physicians, who may desire the opportunity of clinically studying mental diseases, under such restrictions as the medical superintendent may deem wise and proper.

The abolition of the spoils system in the selection of medical officers of State hospitals through the adoption by the State Civil Service Commission, upon the recommendation of the Commission in Lunacy, of a regulation requiring appointments of all medical officers in State hospitals to be made only after competitive civil service examination, and raising the standard of requirements for eligibility to such examinations. This has already resulted in the merited promotion of a number of experienced assistant physicians who otherwise would not have obtained promotion save through favoritism.

The commission has in contemplation the appointment at an early day of a special pathologist, with a completely equipped laboratory, for the prosecution of investigations in neuro-anatomy and neuro-physiology and in the study of brain pathology. It is designed to make this department practically a school for the teaching of brain pathology to physicians who may desire to avail themselves of it, and especially to such of the physicians on the staffs of the respective State hospitals as possess an aptitude and desire for such work.

Upon the subject of occupation of patients he quotes approvingly from the reports of the superintendents of the State hospitals for insane, largely increased provisions and facilities for employment of the inmates. I quote a few :

"During the year we have increased the facilities for the employment of patients by fitting up a general workshop in which are now concentrated the industries of the hospital: as the tailor and shoe shop, the making of brooms and brushes, the picking of hair and manufacturing of mattresses, the reseating of chairs, and upholstering. . . . All of the clothing for patients is made in the institution, and at less prices than were paid to the prisons for inferior articles. The shoemaker, by the assistance of patients, makes all of the shoes and slippers used by the men and women patients at a reduced cost."

"At the risk of appearing a faddist on the subject of occupation, I venture to say that in no respect has the general weal of our patients been more manifestly promoted than by the increased avenues of employment that have been thrown open to them."

FROM W. T. PATTERSON, M. D., LATE SUPERINTENDENT OF ILLINOIS ASYLUM FOR INSANE CRIMINALS.

CHESTER, ILL., Dec. 8, 1894.

CLARK BELL, ESQ.:

Dear Sir:—Your letter received and I make the following brief answers to your questions:

To the first—yes; an absolute divorcing of the business from the professional duties would be beneficial in my opinion. I would favor it.

To the second—I believe the board should have the power of appointing the superintendent.

To the third—a thorough psychological and pathological understanding is necessary to the successful treatment of hospital cases and I would favor judicious demands by law.

To the fourth—this question or rather the answering of it implies a volume. I am thoroughly convinced that all patients should not only be allowed to work but made to employ themselves in some measure. The many different methods and means by which this can be accomplished are multitude in numbers and only actual experience can make one understand how great an improvement can be made upon an idle patient, both mentally and physically by judicious employment.

Yours truly,

W. T. PATTERSON, M. D.,
Ex-Superintendent of the Illinois Asylum for Insane Criminals.

STATE HOSPITAL FOR INSANE.

MIDDLETOWN, ORANGE CO., N. Y., January 16, 1895.

HON. CLARK BELL, Medico-Legal Journal, 57 Broadway, New York City:

Dear Sir:—Some time ago you sent me a few questions relative to asylum management. At the time I was very busy, and the questions were laid away for future reference. Recently, in clearing up some unfinished business, I came across these questions, and now return them to you, together with the answers. I suppose my replies to your questions may come so late as to be of no service. However, you must forgive me for the delay, and entertain a reasonable amount of gratitude on account of the fact that they have received attention at last!

To your 1st question I reply: No. (a) For the reason that the financial and business management should be so directed as to contribute in every way to the highest welfare of the insane, and no one but their physician can thus direct these matters, because no one so well as their physician can appreciate their needs; also,

(b) Because the relegation of the financial and business management of a hospital to a layman, and the medical control to a physician, will cause a conflict of authority likely to result detrimentally to the insane.

For the above reasons, I would not favor such a change.

To the 2d question: The present plan of appointing medical superintendents in this State, viz., the appointment by the board of managers of a physician, certified by the civil service board, seems to be entirely satisfactory. The managers exercise a judicious supervision over the acts of the superintendent, while allowing him such liberty as the good of the insane demands, and his own abilities seem to warrant.

The plan of appointment by managers is, I think, entirely satisfactory.

To the 3d question: Advanced scientific, psychological and pathological studies should be carried on in hospitals for the insane, so far as can be done without detriment to the patients themselves. The interest, comfort and well-being of the patient should be always held as paramount to every other consideration. Experiments in treatment should not be practiced upon the insane. Every physician should be willing to adopt such advanced methods of treatment as have been proven beyond peradventure to be advantageous or curative, but no physician should be compelled, by law, to follow lines of treatment which his own knowledge, experience and judgment, do not dictate as best for his patients.

To the 4th question: It is not possible to say definitely how far employment may be used with advantage to the insane; but the matter should be determined by the physician after a careful study in each case, and employment of the insane should only be resorted to as a therapeutic measure. Employment is one of many therapeutic methods which may be demanded for the benefit or cure of the insane, and the question "how can all the insane . . . best obtain the benefit of employment," is no more pertinent than would be the question: "How can all the insane best obtain the benefit of quinine, morphia or hyoseyamus?" Every state hospital should be provided with a sufficient variety of methods for employing and diverting, and entertaining the insane to the end that they may receive the greatest amount of benefit from such agencies; but the idea of employing the insane from economic motives should never for a moment be considered. Especially should the great State of New York, which has so recently adopted State Care for the Insane, and by legislative enactment calls all its insane institutions "State Hospitals," see to it that they are hospitals in fact, as well as name, and beware lest, from misguided motives of economy, they degenerate into work-houses.

With renewed assurances, I am, very truly yours,

SELDEN H. TALCOTT, Superintendent.

FROM DR. RICHARD DEWEY, LATE SUPERINTENDENT ILLINOIS STATE
HOSPITAL FOR INSANE, NOW MANAGING EDITOR AMERICAN
JOURNAL OF INSANITY.

CHICAGO, Dec. 29, 1894.

MR. CLARK BELL, Editor Medico-Legal Journal, 57 Broadway, N. Y. :

My Dear Sir :—In reply to your queries, I would say :

I. I take it for granted that a single executive head is necessary for an institution for the insane, and it is equally evident, to my mind, that only a medical man can meet the requirements. He should possess high personal character and high administrative ability. His attainments in medicine should be first-class, but he should be primarily an *executive* officer.

II. There is no better way than to have a board of trustees or managers, who will appoint the superintendent. Whatever method of government is adopted, it will, as a rule, amount to the same thing. It will represent the degree of intelligence and humanity attained by the community at large. The officer in charge will reflect the character of his superiors, who, in turn, will reflect that of the executive of the state, and the latter will be such an one as the people choose, and the manner of appointment is a question of detail. The results will be substantially the same under a government like ours. Improvement and progress in the methods of organization will be secured only by a process of education, discussion, and the promulgation and acceptance of higher views. I believe that civil service rules will accomplish great good in improving organization and increasing efficiency.

III. There can be no two opinions as to whether scientific work should be done in hospitals for the insane. This will not be generally secured, however, until its importance is appreciated by the people at large, by the governors whom they elect, and by the boards these latter appoint.

Advancement in general intelligence, in the quality of civil service and emancipation from party politics, must precede the attainment of substantial and permanent results of value to science. Not until it is universally understood that insanity is a disease, and that earnest scientific research into its causes and conditions is an absolutely essential part of the work of institutions, will this work be placed in the hands of the right kind of governors, governing boards, and superintendents, and when the right men are secured, they will quickly provide the necessary equipment in men and in material. Legislation in advance of public appreciation of these requisites will be of little avail.

IV. The attainment of a system of employment of the highest efficiency is another question of detail dependent, remotely, on public appreciation, and immediately upon the infinitely varied conditions with which institutions have to deal; the former, through its representatives, must attend to the provision of such industrial equipment as is needed, and the problems will be worked out in a satisfactory manner whenever well-qualified men are placed in charge.

Very truly yours,

RICHARD DEWEY.

I take pleasure in concluding the series of letters sent me to add one received from the editor of the *Journal of Mental Science*, so long and so honorably connected with the hospital care and management of the insane in Great Britain, Dr. D. Hack Tuke, of London.

HANWELL, Nov. 10, 1894.

Dear Mr. Bell:—Excuse delay in answering your questions. I now enclose replies, which will, I hope, suffice for your purpose:

1. The superintendents of insane hospitals in England are appointed by the governors of the institution, on the recommendation of the committee. I am now speaking of the registered hospitals for the insane, recognized as such under the Lunacy Act of 1845, and partially supported by voluntary contributions and charitable gifts and bequests. Practically their management is conducted by a committee of governors—these being constituted of benefactors of a certain sum at one time. The patients belong to the upper and middle classes of society; the support of those in indigent circumstances being assisted by the payments of the higher class patients.

With regard to the county asylums in this country, they are provided for and supported by the local rates, assisted by Capitation Grants for Maintenance from the public purse. They are under the management of county councils, which appoint special asylum committees—these county councils being elected by the ratepayers. The medical superintendents are nominated by the committee, subject to the confirmation of the council.

2. This is answered in the reply to question 1.

3. In regard to political influence in the appointment of medical superintendents, it is possible that there may be instances in which the bias of individual members of a committee may enter into their judgment of the most suitable candidate, but political influence, in the sense in which you employ the term, is not known. It would be a matter of perfect indifference, to those who appoint the candidate, what party in the state happened to be in power, or whether any change happened to occur in the Government during his tenure of office. The church, of which a candidate is a member, might exert some influence on his election, as to whether he was a Roman Catholic, a member of the established church or a non-conformist, but I am not aware that this influence has been abused to any material extent, unless it be in Ireland.

4. In regard to internal management, the Medical Superintendent, subject to the committee, is the paramount authority in the institution. He necessarily leaves to the steward, &c., all the details which belong to their offices. In case of dispute, the committee would have to intervene. It is the opinion of some that the functions of the Medical Superintendent should be restricted to the care and treatment of the patients, but the general opinion is that this is impracticable. Hoping you are well,

Yours truly,

D. HACK TUKE.

PSYCHOLOGICAL SECTION.

MEDICO-LEGAL SOCIETY.

THE ANNUAL REPORT OF THE SECTION WAS SUBMITTED TO
THE EXECUTIVE COMMITTEE OF THE SOCIETY AT THE
JANUARY MEETING, 1895, AND DULY APPROVED.

ANNUAL REPORT.

MEDICO-LEGAL SOCIETY, Jan. 1, 1895.

To The Fellows of the Medico-Legal Society:

The present membership of the Section is fifty-eight, of which a roll is published in the last number of the Bulletin. Three resignations have been accepted during the year, one name has been dropped from the rolls for non-payment of dues and one member has been expelled for conduct unbecoming a gentleman, and falsehood.

There have been four numbers of the Psychological Bulletin published last year with an issue of 2500 copies, copies of which are submitted with this report. They contain a complete record of its scientific work. The officers are as follows:

Chairman.

PROF. ELLIOTT COUES.

Vice-Chairmen.

CLARK BELL, Esq., 57 BROADWAY, N. Y.

HAROLD BROWETT, Esq., SHANGHAI, CHINA.

C. VAN D. CHENOWETH, WORCESTER, MASS.

T. D. CROTHERS, M. D., HARTFORD, CONN.

F. E. DANIEL, M. D., AUSTIN, TEXAS.

HENRY HULST, M. D., GRAND RAPIDS, MICH.

R. J. NUNN, M. D., SAVANNAH, GA.

A. E. OSBORNE, M. D., GLEN ELLEN, CAL.

JAS. T. SEARCEY, M. D., TUSCALOOSA, ALA.

U. O. B. WINGATE, M. D., MILWAUKEE, WIS.

Executive Committee.

CLARK BELL, Esq., CHAIRMAN.

H. W. MITCHELL, M. D.

W. TRAVIS GIBB, M. D.

PROF. ELLIOTT COUES, EX-OFFICIO.

Secretary and Treasurer.

CLARK BELL, Esq., 57 BROADWAY, N. Y.



E. M. Stoughton

The work of the Section has been devoted to the following subjects :

1. The medical jurisprudence of insanity.
2. Inebriety, heredity and sociology.
3. Criminality and criminal anthropology.
4. Mental suggestion, and especially of physicians as to experiments in practice of hypnotic suggestion, or the therapeutic value of hypnosis.
5. Experimental psychology.
6. Telepathy.
7. Clairvoyance.
8. Facts within the domain of physical research, including investigation in the modern so-called spiritualism. All members of the Medico-Legal Society, active, corresponding, or honorary are eligible to membership in the Section at an annual subscription of \$1.50 and receive the Bulletin free.

All others who are approved by the executive committee, on payment of \$5 initiation fee and \$1.50 annual dues payable in advance. The wives of members of the Medico-Legal Society are eligible to membership on payment of \$1.50 annual dues, without initiation fees.

Respectfully submitted in behalf of the Section.

CLARK BELL, Vice Chairman and Secretary.

The following new members have been elected to the Psychological Section since last report :—

GEORGE FINCK, Esq., 145 BROADWAY, N. Y.
 GEORGE F. LAIDLAW, M. D., 157 W. 41st St., N. Y.
 W. R. WOOD, M. D., SCOTLAND NECK, N. C.
 MRS. GEORGE FINCK, 463 LEXINGTON AVENUE, N. Y.
 F. B. DOWNS, M. D., BRIDGEPORT, CONN.
 THOMAS J. HUDSON, Esq., WASHINGTON, D. C.
 JAMES R. COCKE, M. D., BOSTON, MASS.
 HON. W. P. LETCHWORTH, PORTAGE, N. Y.
 G. S. ADAM, M. D., SUPT., &C., WESTBOROUGH, Mass.
 H. P. STEARNS, M. D., HARTFORD, CONN.
 SAMUEL B. LYON, M. D., WHITE PLAINS, N. Y.
 GEORGE ALLEN, M. D., MIDDLETOWN, N. Y.
 C. A. RICE, M. D., GREENVILLE, MISS.

The Section met on February 21, 1895, at the residence of Mr. and Mrs. Geo. Finck, 463 Lexington Avenue. The evening was devoted to Hypnotism.

Vice-Chairman Clark Bell, Esq., presided. There was a large attendance.

Albert Bach, Esq., read a paper by Dr. T. D. Crothers, of Walnut Lodge, Hartford, on Hypnotism.

Judge W. B. Harden, of Savannah, Ga., gave very interesting details of experiments made by himself of the phenomena of the Hypnotic trance.

H. S. Drayton, M. D., made an address on the subject of Hypnotism, with data, that will form a portion of his forthcoming work.

Mr. Clark Bell then gave a short address, touching on two heads:

1. The present state of the scientific view of Hypnotism.
2. The relation of Hypnotism to the law.

That closed the first part of the programme.

Miss Story sang and was encored.

Geo. F. Laidlaw, M. D., conducted the experimental work with two mediums, who were put under control, and gave a large number of experiments with each, illustrating the complete subjection of the will of the subject hypnotized, to the domination of the Hypnotizer—loss of sensibility to pain, and the usual phenomena. Bearing upon the legal questions, one of the subjects in the trance made and delivered his promissory note for \$1,000 to the Hypnotizer, at his dictation. It was done with reluctance. The signature, taken from the note, was acknowledged by the subject to be genuine afterwards, but without the knowledge of the maker of the note.

CLARK BELL, Secretary.



HON. JOHN DEAN,
ASSOCIATE JUSTICE SUPREME COURT OF PENNA.

1892 -



HON. DAVID NEWLIN FELL,
ASSOCIATE JUSTICE SUPREME COURT OF PENNA.

1893 -

TELEPATHY IN INSECTS AND ANIMALS.

Prof. C. V. Riley, of Washington, communicates through the *Evening Star*, of Washington, some interesting facts bearing upon the power of insects to communicate at great distances by means beyond our present knowledge or comprehension :—

“Once upon a time Prof. Riley had two ailanthus trees in his front yard. They suggested to him the idea of obtaining from Japan some eggs of the ailanthus silkworm. He got a few and hatched them, rearing the larvæ and watching anxiously for the appearance of the first moths from the cocoons. He put one of the moths in a little wicker cage and hung it up out of doors on one of the ailanthus trees. This was a female moth. On the same evening he took a male moth to a cemetery a mile and a half away and let him loose, having previously tied a silk thread around the base of his abdomen to secure subsequent identification.

Prof. Riley’s purpose in this performance was to find out if the young male and the female moth would come together for the purpose of mating, they being in all probability the only insects of their species within a distance of hundreds of miles, excepting only the others possessed by Prof. Riley himself. This power of locating each other had previously been remarked in these insects. In this case, sure enough, the male was found with the captive female the next morning. The latter had been able to attract the former from a distance of a mile and a half.

Assuming that this unknown power or faculty, is not due to sight, smell or hearing, our ignorance of how the communication is made is paralleled and illustrated by the ignorance of insect life as the means by which man has recently learned how to transmit sound by telegraph almost instantaneously at great distances.

The facts remain, and the results are not more marvellous in the one case than in the other. Knowledge of the method of the latter, withheld from many for twenty centuries, is now as simple as the other must of course be, to the insect sense and knowledge.

The dog, sleeping on the rug before the fire in midwinter, in the farm house a mile from the nearest dwelling, suddenly starts up, apparently listens, and desires to go out. Snow covers all the landscape for miles, and no clue, audible to human ears, indicates what attracts, arouses and interests him. This may be, in his case, a sense of which we are now ignorant, or an acuteness of hearing quickened by some means akin to what we hear on the telephone wire, or the scratch of a pin on a fifty feet log. We naturally ascribe it to the sense of hearing, sharpened, because the limitations of our minds make it seem otherwise impossible.

The tendency of modern scientific thought is to claim everything impossible inconsistent with present human knowledge or methods of thought.

President A. J. Balfour, of the Society of Psychical research in 1894, publicly asserted that the establishment of the fact of the transference of thought from one human intelligence to another, by force of will, would be far more scientifically extraordinary than the colliding of the Earth with a body foreign to our Solar System in the movement we are making through inter-stellar space. He classifies such phenomena as odd and dramatically strange in the sense that they will not fit in easily with the views which physicists and men of science generally give us of the universe in which we live.

It is unscientific, in fact, to deny the existence of such phenomena, as the limitations of human knowledge make inexplicable to our present understanding.

All the marvels of electricity, of which we yet know only a part of the alphabet, are samples of the force of this scientific truth. The illumination of the human present knowledge of electricity, due to the torch of one single investigator, serves the two-fold purpose, to teach not only the impenetrable mental darkness of all mankind before our era, but the absurdity of mak-

ing the limitation of human knowledge and comprehension identical with apparent scientific possibilities.

A consideration and study of the actual and natural powers of insects illustrate this. Aptly to quote another :—

“Concerning the ordinary senses of insects comparatively little is known. Most of them certainly see well, the eyes of many species being far more elaborate than those of human beings. The eyes of common house flies and dragon flies are believed to be better fitted than the human eye for observing objects in motion, though those creatures are short sighted. It may reasonably be supposed that insects possess taste, judging from the discrimination which they exercise in the choice of their food. That they have smell is a matter of common observation, and has been experimentally proved by Sir John Lubbock and others.

“Most insect seem to be deaf to the sounds which are heard by human beings. At the same time there is no question that they produce sounds and hear sounds that are entirely beyond our own range of auditory perception. Sir John Lubbock has said that we can no more form an idea of these sounds than we should have been able to conceive a notion of red or green if the human race had been blind. The air is doubtless often vocal with the sounds made by insects of so high a pitch as to be entirely out of range of man’s power to hear.

“Certain senses in insects appear to be beyond comprehension. The neuters among the ants known as ‘termites’ are blind, and can have no sense of light in their burrowings; yet they will reduce a beam of wood or an elaborate piece of furniture to a mere shell without once gnawing through to the surface. An analogy is found among mammals. A bat in a lighted room, though blinded will fly in all directions with great swiftness and with infallible certainty of avoiding concussion or contact with any object. It seems to be able to feel at a distance.”

Agnosticism in science, is simply inability to define exactly the limitations of human knowledge. To say that we do not know, as a reason why we deny the possibility of an apparent phenomena, is unscientific. The human race were all agnostics through all ages to the truths Edison revealed. They were truths, and eternal, before “the morning stars sang together,” and the man who denies the possibility in the past of what this inventive genius has added to the sum of present human knowledge, would be cousin german to him, who in matters of belief accepted a creed as short as that of La Place, who insisted upon believing nothing that could not be demonstrated. It would need a powerful microscope to even find or describe it.

HALLUCINATIONS AMONG THE SANE.

An idea has obtained among the majority of medical men, especially those skilled in mental diseases, that auditory hallucinations indicate derangement of the mind. Medical men unskilled in the investigation of mental phenomena, usually regard the hearing of distinct vocal, and the repetition of ordinary sounds, as indicating disturbed mental state.

The Society for Psychical Research (Proceedings part XXVI, Aug., 1894), makes a report "on the census of hallucinations," by the select committee under the chairmanship of Prof. Henry Sidguick, which gives the summary of 17,000 answers collected by 410 questioners.

The inquiry has been such as to include visual as well as auditory tactile hallucinations, the former being largely in the preponderance.

This report holds as a proved fact, that "*between deaths and apparitions of the dying person, a connection exists which is not due to chance alone.*"

This report is not the work of medical men. Mr. Myers, the only physician on the committee, died before the completion of the report; and this is unfortunate, because we should regard with great interest the verdict of medical thinkers on some phases of this subject; not that they are or would be more acute, careful or thoughtful in investigation, but because their minds would be more or less influenced by preconceived opinions as to hallucinations, especially auditory voices and sounds,—all persons known to have been in asylums were excluded, but there are many insane persons in the community who be-

lieve themselves sane and in good health, and who are so regarded by their friends, who might be the victims of insane hallucinations. The summary of the affirmative answers were, from men, 7.8, women, 12.0, the average percentage being 9.9.

Many well-known historical personages believed they heard audible voices, who were not regarded as insane by their contemporaries, and the general opinion of mankind has varied upon this subject at different eras.

Hallucinations of sight or vision may be due to some defect in the organs of perception.

Allan McLane Hamilton says "that visual hallucinations are largely dependent upon retinal phenomena, and are often connected with ischemia or disturbed circulation at the back of the eye." In speaking of "auditory hallucinations," says: "They usually consist of the recognition of the sound of imaginary voices and the repetition of many ordinary sounds. A distinctly insane hallucination of hearing has nearly always valuable diagnostic significance, for the reason that it indicates a more general derangement than those of the other senses. A person may readily have such a sane hallucination as hearing an imaginary voice, as the result, possibly, of an irritation of the middle ear, but the insane individual expresses his fear of the sounds of voices speaking through a telephone, the register, or cracks in his room; or, in a more disorderly condition, it is the figures in the pictures upon the wall who are addressing him."

He also says: "Auditory hallucinations that convey no suggestion of insanity, like all other ordinary false perceptions, are nearly always immediately removed, are recurrent in the original form, and of course are not associated with other evidences of derangement."

Auditory hallucinations may occur in certain forms of hysteria and as the result of disease. This class were, so far as

the committee could do, eliminated from the census ; and Hamilton, before quoted, says :

“The expression of hallucination of all kinds is very irregular and does not necessarily indicate insanity ;” citing the views of Lombroso and Brierre de Boismont.

Acute alcoholism is attended with hallucinations, both of sight and hearing, and are clearly induced by hypnotic suggestion.

Vice-Presidents for the States, Territories and Provinces.

- Alabama—Judge Thos. W. Colemann, Montgomery.
 Alaska—Clarence Thwing, M. D., Sitka.
 Arizona—George Goodfellow, M. D., Tucson.
 Arkansas—H. C. Dunavant, M. D., Osceola.
 Austria—Prof. R. Kraft-Ebing, Vienna.
 Belgium—Dr. Vleminx, Brussels.
 California—A. E. Osborne, M. D., Glen Ellen.
 Colorado—Prof. J. T. Eskridge, Denver.
 Connecticut—Judge Elisha A. Carpenter, Hartford.
 Chili—Hon. Ricardo C. Trumbull, Santiago.
 China—Harold P. Browett, Esq., Shanghai.
 Cuba—Dr. Venancio Zorilla, Havana.
 Dakota, North—O. W. Archibald, M. D., Jamestown.
 Dakota, South—John M. Harcourt, Steele.
 Delaware—Gov. T. S. Biggs, Dover.
 Denmark—Prof. Godeken, Copenhagen.
 District of Columbia—W. W. Godding, M. D., Wash.
 England—Wm. L. Orange, M. D., London.
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 Florida—Dewitt Webb, St. Augustine.
 France—Victor Parent, Toulouse.
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 Germany—Prof. D. Furstner, Heidelberg.
 Holland—Dr. P. A. H. Sueens, Vucht.
 Hungary—Staatsanwalt Emerich V. Havas, Buda Pesth.
 Illinois—J. E. Owens, M. D., Chicago.
 Indiana—W. B. Fletcher, M. D., Indianapolis.
 Indian Territory—Dr. A. M. Keener, Burt.
 Iowa—Jennie McCowen, M. D., Davenport.
 Ireland—Conolly Norman, M. D., Dublin.
 Italy—Enrico Ferri, M. D., Rome.
 Japan—Dr. J. Hashimoto, Tokio.
 Kansas—Judge Albert H. Horton, Topeka.
 Kentucky—Dr. D. W. Yandell, Louisville.
 Louisiana—Dr. Joseph Jones, New Orleans.
 Maine—Judge L. A. Emery, Ellsworth.
 Manitoba—D. Young, M. D., Selkirk.
 Maryland—H. B. Arnold, M. D., Baltimore.
 Massachusetts—Ed Cowles, M. D., Somerville.
 Mexico—Senor Montifar, Mexico.
 Michigan—Victor C. Vaughan, Ann Arbor.
 Minnesota—Prof. W. A. Hall, Minneapolis.
 Missouri—B. F. Wilson, M. D., Slater.
 Montana—W. S. Haviland, M. D., Butte.
 Mississippi—Dr. C. A. Rice, Meridian.
 Nebraska—Dr. Wm. M. Knapp, Lincoln.
 Nevada—S. M. Bishop, Reno.
 New Brunswick—Judge A. L. Palmer, St. John.
 Newfoundland—Dr. McKenzie, St. Johns.
 New Hampshire—Granville P. Conn, M. D., Concord.
 New Jersey—Hon. George A. Halsey, Newark.
 New Mexico—Gov. Bradford L. Prince, Santa Fe.
 New South Wales—George A. Tucker, M. D.
 New York—Mrs. M. Louise Thomas, New York City.
 New Zealand—Prof. Frank G. Ogston, Dunedin.
 North Carolina—F. T. Fuller, M. D., Raleigh.
 Norway—Dr. Harold Smedal, Christiania.
 Nova Scotia—Simon Fitch, M. D., Halifax.
 Ohio—R. Harvey Reed, M. D., Mansfield.
 Oklahoma Ter.—A. H. Simonton, M. D., Oklahoma City.
 Ontario—Daniel Clark, M. D., Toronto.
 Oregon—Chief Justice Hon. R. S. Strahan, Portland.
 Pennsylvania—J. B. Murdock, M. D., Pittsburgh.
 Peru—Senor F. C. C. Zegarro, Washington, D. C.
 Portugal—Bettincourt Rodrigues, M. D., Lisbon.
 Quebec—Wyatt Johnston, M. D., Montreal.
 Queensland—T. Crisp Poole, Esq., Brisbane.
 Rhode Island—Henry E. Turner, M. D., Newport.
 Russia—Prof. Dr. Mierzejewski, St. Petersburg.
 Saxony—Judge de Alinge, Oberkotzen Hof.
 Scotland—W. W. Ireland, Preston Pans, Edinburgh.
 Serbia—Hon. Paul Savitch, Belgrade.
 Silesia—Herman Kornfeld, Grotkau.
 Sicily—Prof. Dr. Fernando Puglia, Messina.
 South Carolina—Dr. Middleton Michell, Charleston.
 Spain—Sig. A. M. Alvarez Taladriz, M. D., Valladolid.
 Sweden—Prof. Dr. A. Winroth, Lund.
 Switzerland—Prof. Dr. August Forel, Zurich.
 Tennessee—John. H. Callander, M. D., Nashville.
 Texas—Dr. D. R. Wallace, Terrell.
 Utah—Le Grand Young, Esq., Salt Lake.
 Vermont—Prof. W. L. Burnap, Burlington.
 Virginia—Dr. James D. Moncre, Williamsburg.
 Washington—John W. Waughoo, M. D., Fort Steilacoom.
 West Virginia—F. M. Hood, M. D., Weston.
 Wisconsin—Dr. James H. McBride, Wauwatosa.

Mr. Clark Bell then, from the Select Committee on the Law of New York Punishing Attempts of Suicide, submitted the following report. [This report appears elsewhere in our columns.] The report was received and ordered placed on file. Upon the adoption of the report there was discussion. Dr. Thos. H. Manley opposed the adoption, and several members favored it. On being put to vote, the report was unanimously adopted and ordered to be forwarded to the Legislature of the State, and the Constitutional Convention.

Mr. Bell then announced the death of Ex-Judge Gunning S. Bedford since the last meeting, and paid a tribute to the memory and public service of the deceased. The following letters were read from District Attorney, Hon. Delancey Nicoll, and Judge James Fitzgerald, of the Court of General Sessions:

NEW YORK, November 8th, 1893.

Dear Mr. Clark Bell—

I am suffering from a very severe cold, and regret that it prevents me from attending the meeting of the Medico-Legal Society this evening, to avail myself of the opportunity presented by your very kind invitation to pay my feeble tribute to the memory of our deceased friend, Judge Gunning S. Bedford.

His charming individuality endeared him to all who knew him, while his talents and integrity won for him an enviable reputation at the bar and upon the bench.

All too soon he has passed from among us. We feel his loss keenly, and the entire community in which his life was passed mourns him sincerely.

With renewed thanks for the courtesy of your invitation, and deep regret that illness renders it impossible for me to join personally in the honors your society will, I know, so worthily pay to the memory of the upright citizen, accomplished lawyer, and distinguished jurist, I am—

Yours very truly,

JAMES FITZGERALD.

NEW YORK, November 1st, 1893.

Clark Bell, Esq., Secretary Medico-Legal Society—

MY DEAR SIR :—I regret very much that pressure of official engagements will make it impossible for me to attend the next meeting of the Medico-Legal Society, at which, I understand, suitable action will be taken respecting the death of ex-Judge Gunning S. Bedford.

It is peculiarly fitting that your society should add its tribute to the memory and worth of Judge Bedford, for not alone was he descended from a family of eminent physicians, but he himself took a special interest in the field of work mapped out by your society. He took a leading part in many cases which have excited widespread interest and furnished precedents in the annals of medico-legal jurisprudence. His knowledge of medicine and its allied sciences was of a very high order, and his proficiency therein, coupled with his profound knowledge of the law, placed him in the front rank of medico-legal specialists. His success in the many important cases tried by him was in no small degree directly attributable to this special ability, and Judge Bedford's brilliant career as a criminal lawyer has again demonstrated how essential some knowledge of medicine, surgery, and of mental diseases is to the lawyer who would successfully practice at the criminal bar. In this respect Judge Bedford's career furnishes a striking example to all practicing lawyers, the lesson of which I trust will not be lost.

Your society merits especial commendation for its valuable efforts in this direction.

Very truly yours,

DELANCEY NICOLL.

Hon. A. Oakey Hall made an address upon the life and character of the deceased.

Mr. Bell then made an eulogy on the life and character of Prof. Charcot, of Paris, Honorary Member of the Society. Dr. Simeon Baruch made remarks eulogistic of the character and life of the deceased :

The mournful intelligence has reached us that death has taken away Jean Baptiste Charcot, the great teacher and physician, in the very zenith of his fame. Among the brilliant men who have shed lustre upon French medicine in the present generation, Charcot stood pre-eminent. He towered so far above his cotemporaries that even the tongue of envy was silenced and attuned to reverential admiration in the contemplation of his life and character. Charcot was not only brilliant, but original and path-finding. Like his noble-hearted countryman, Pinel, he has labored successfully to bring order out of the chaos existing in psychiatric medicine. These labors deserve the recognition of this society, whose work lies partially in the same direction.

From the enormous clinical material gathered in the 4,000 beds of the Salpêtrière, to which he devoted three days of every week, his genius evolved methods of clinical instruction for the thousands of eager students and practitioners who sought inspiration and learning at this fountain-head of neurology. Not only in the diagnosis of unpromising nervous diseases, but also in their treatment, did Charcot create important and lasting advances. His brilliant and original mind cast aside the trammels of traditional therapeutics. He discarded medicinal efforts to a great extent, and developed psychotherapy, etechochery, and hydrotherapy into remedial agencies whose potency had formerly received but scant recognition. His large clintile, perhaps the most cosmopolitan ever assembled in a physician's waiting rooms, bore eloquent testimony to his skill as a practical physician and example.

The memory of such a man is a rich heritage to all who strive to improve the condition of mankind.

Series Three of the Bulletin of the Psychological Section was laid before the body.

The society adjourned.

ABRAM H. DAILEY,

CLARK BELL,

President.

Secretary.

MEDICO-LEGAL SOCIETY—ANNUAL MEETING.

The annual meeting was held December 13, 1893, at Hotel Imperial.

In the absence of the President and Vice-President, Dr. S. B. W. McLeod was called to the chair, and Clark Bell acted as Secretary.

The minutes of the November meeting were read and approved.

The following members were, on recommendation of the Executive Committee, duly elected—

ACTIVE MEMBERS.

Proposed by Clark Bell: Judge Leo C. Dessar, 261 Broadway, N. Y.; Emanuel I. S. Hart, 408 W. 19th St., New York City; C. C. Shayne, Esq., 124 W. 42d St., New York City.

Proposed by Nicholas Senn, M. D.: Dr. William Fox, Milwaukee, Wis.

Proposed by R. Harvey Reed: S. S. Thorne, M. D., President Ohio State Ass. R. W. S., Vice-President National Ass. R'way S., 506 Lagrange St., Toledo, O.

Proposed by George Chaffee: W. J. Kelly, Esq., Atty. Long Island R. R., 192 Broadway, New York City; John F. Valentine, M. D., L. I. R. R., 150 Noble St., Brooklyn, N. Y.

Proposed by G. R. Howard, M. D.: W. T. Jameson, M. D., Ch. Surg. T. & G. N. R'way, Palestine, Tex.

Proposed by Thomas H. Manley, M. D.: Douglass H. Stewart, M. D., 111 W. 64th St.; J. B. Murphy, M. D., Chicago, Ill.

CORRESPONDING MEMBERS.

Proposed by Clark Bell, Esq.: Titus M. Coan, M. D., No. 70 Fifth Avenue, New York City; P. C. Remondino, M. D., No. 701 Schiller Building, Chicago, Ill.; James Moore Ball, M. D., of Keokuk, Iowa; Prof. Elliott Coues, of Washington, D. C.; Chief Justice James P. Sterrett, Supreme Court of Pennsylvania; Judges Henry Green, Henry M. Williams, Alfred Hand, J. Brewster McCullom, John Dean, and Samuel G. Thompson, Associate Justices of the Supreme Court of Pennsylvania.

M. E. W. Chamberlain laid his resignation from the society before the meeting and asked that it be accepted. On

motion of Dr. Thomas Manley the resignation was accepted. Mr. Bell expressed regret at the loss of so valuable a member.

The following gentlemen were named as Inspectors of Election by the President, Judge Dailey, by letter to the Secretary: Dr. Ira O. Tracy, Vivian Hawken, Esq., and Dr. A. M. Fernandez—to whom the election lists were delivered by the Assistant Secretary, Mr. Eugene Cohn.

The paper of Judge Conway W. Noble, of Cleveland, Ohio, "The Judge and the Medical Expert," was read, in the absence of the author and at his request, by Clark Bell, Esq. It was discussed by Dr. Thomas H. Manley and by Clark Bell, Esq.

The paper of Dr. Granville P. Conn, of New Hampshire, was then read by Dr. George Chaffee, of Brooklyn, on "Transportation of Cases of Infectious Diseases." The paper was discussed by Dr. Thomas Cleland, Dr. George Chaffee, and the Chairman, Dr. S. B. W. McLeod.

Dr. Manley moved, and it was carried, that the propriety of forwarding a copy of this paper to each State Board of Health be referred to the Executive Committee.

The paper of Dr. G. E. Potter, of Newark, N. J., "Traumatism and Its Relation to Crime," was then read by the author. It was discussed by Dr. Thomas Manley, Dr. M. D. Field, and the author of the paper.

Dr. Charles Milne called attention to the recommendations of the *New York Sun*, editorally, as to separate institutions here for acute insane sustained by charitable contributions, and to a house for epileptics of the same character.

Mr. Bell withdrew the name of Judge A. L. Palmer from the candidacy for 1st Vice-President of the society, leaving him in nomination as Vice-President for the Province of New Brunswick.

The tellers reported the following officers elected :

[*Vide* the officers elected published elsewhere.]

Except 1st Vice-President, on whom there was no choice, and the result was announced by the Chair.

On motion, the society proceeded to the election of 1st Vice-President, and Dr. Matthew D. Field was nominated and declined the honor. Mr. Bell stated that Judge H. M. Somerville had written him, preferring not to accept the position. Mr. Bell then nominated Dr. S. B. W. McLeod. On proceeding to ballot, Dr. McLeod was unanimously elected.

Dr. M. D. Field, Treasurer, stated that Frank Hartley, M. D., who had been elected Assistant Librarian, had not qualified, and objected that he was not eligible to the office, and the Chair sustained the objection under the by-laws.

On motion, the body proceeded to the election of Assistant Librarian, and Dr. Thomas Cleland was duly elected.

The annual reports were laid over to the January meeting of the Society. Also of the Bacteriologist and Microscopist. The Treasurer made no report.

The following additional Vice-Presidents were elected: Iowa—Jennie McCowen, M. D., Davenport; Ireland—Connolly Norman, M. D., Dublin; Italy—Enrico Ferri, M. D., Rome; Montana—W. S. Haviland, M. D., Butte; Queensland—T. Crisp Poole, Esq., Brisbane; Silesia—Herman Kornfeld, M. D., Grotkau.

The following Vice-Presidents were elected, the candidates on tickets being ineligible on account of their dues being in arrears: Judge Locke E. Houston for Mississippi; Prof. F. L. Billings for Nebraska; W. S. Haviland, M. D., for Montana; Prof. L. Wille for Switzerland; Chancellor Henry A. Gibson for Tennessee; T. Gold Frost, Esq., for Minnesota; Daniel L. Brinton for Maryland.

Mr. Bell reported that the steps for the founding of a Section upon Railway Surgery were progressing favorably, that railway surgeons and railway counsel were taking an

interest in the movement, and that the Surgeon-General of the United States had written, favoring the proposed section and consenting to act as one of the Vice-Chairmen on the surgical side. That a large number of chief and local railway surgeons had united with the society, many of whom took a deep interest in the proposed section.

On motion, the society adjourned.

S. B. W. McLEOD,
Acting President.

CLARK BELL,
Secretary.

EDITORIAL.

THE CORONER SYSTEM.

The approaching session of the New York Legislature will doubtless consider this interesting question.

The select committee of the Medico-Legal Society are directed by that body to submit a memorial upon the question to the Legislature of the State of New York and to the Constitutional Convention of that State. The composition of that committee will entitle its work to careful consideration. The Chairman, Mr. Clark Bell, has for some years been a vigorous friend of the proposed change in the administration of that officer.

His paper upon the coroner's office and its abolition, read before the Medico-Legal Society in January, 1881, was an elaborate presentation of the subject, which was renewed before the State Medical Society of the State of New York in February of that year, demanding the abolition of the office of coroner, as then administered, and strongly recommending the adoption of the plan which had been inaugurated in Massachusetts shortly prior to that date (May, 1877), and which had then gone into practical effect.

That act was mainly due to the labor of another name upon that committee, Theodore H. Tyndale, Esq., of the Boston bar, who had brought up the subject in Massachusetts in an address before the Department of Health of the American Social Science Association. His efforts were seconded by the State Medical Society of Massachusetts. Ex-Coroner Moritz Ellinger, another member, had served two full terms as coroner in the City of New York, was fully

equipped for the whole subject by study, observation, and experience in its practical work, and had rescued the coroner's office in the City of New York from the degradation into which it had fallen, and brought it into as complete a system as was practicable under the law as it then stood.

Judge Abram H. Dailey, the President of the Medico-Legal Society, is also upon that committee, and Dr. Hubbard W. Mitchell, the President-elect of that body, who brings to the *personnel* of the committee great attainments for the subject. Judge Charles G. Garrison, of the Supreme bench of the State of New Jersey, has studied and taken a degree in both law and medicine, and is one of the best equipped students of medical jurisprudence upon the American bench of the Supreme Court of the States.

Dr. Wyatt Johnson, a rising and brilliant physician of Montreal, Canada, has been selected by the Government of the Province of Quebec to make a careful study of the coroner's office, as now administered in the American States, and report the same to the Attorney-General of that Province, to enlighten the government of Quebec and its legislature on the subject, where changes in the coroner system were under contemplation.

The Medico-Legal Society has stood strongly in favor of the abolition of the coroner's office for more than a decade.

The public press, with great unanimity, favors its abolition.

The public sentiment strongly favors it.

The approaching Constitutional Convention will consider it, and the moment is opportune for the abolition of the office.

The question of the hour is to determine what we shall have in its place.

The merits of the law of Massachusetts will be examined and considered.

The plan adopted in the sister State of New Jersey, which works admirably, and has been introduced without abolishing the office of coroner and without causing any real conflict with it, and could be easily followed in New York if thought advisable, will be illustrated and considered.

The plan adopted in the States of Rhode Island and of Connecticut, especially, will be also fully illustrated by the committee in their report, and the plan recommended to the Provincial Government of Quebec by Dr. Wyatt Johnson in his report.

This, in brief, will be the field of the impartial labors of this committee, to be laid before the New York Legislature early in its session and before the Constitutional Convention when it assembles.

HOSPITAL FOR ACUTE INSANE AND ONE FOR EPILEPTICS.

The *New York Sun* on Thanksgiving day strongly advocated on its editorial page the establishment in New York by charitable and philanthropic millionaires of a hospital in that city for the acute insane, to be managed and conducted on the most advanced ideas. And that similar provision should be made for epileptics, now so large a class, since the veto by the Governor of the legislation of last year in their behalf.

It is true that when death comes to the enormously rich plans for human amelioration are often and should be considered. The increase in the number of millionaires is amazing.

The suggestion of the *Sun* is timely and good. We have a superabundance of hospitals merely, and one million would go a long way to accomplish the great good the *Sun* recom-

mends. The present hour is the proper time for the millionaire to consider and perfect plans for such projects. The death-bed or the last day of a man's life rarely gives sufficient time or opportunity for the consummation of such a purpose.

There are hundreds of men who would be glad to carry out the *Sun's* project.

Who is the *one* wiser than the other who will do it?

INFALLIBLE TESTS OF DEATH.

M. Bouchut gives the following tests, which is quoted by Dr. Louis Menard in his article on "Premature Interments :"

"The infallible evidence of death is the progressive chilling of the body, which is put in equilibrium with the surrounding temperature. When this temperature descends below 20 degrees centigrade (68 degrees Fahrenheit), proved in the armpit, and below 22 degrees centigrade internally, that becomes a certain sign of the cessation of life.

"The proof of this temperature is then *a simple and easily-applied means of recognizing, in a certain and indubitable manner*, the signs of death, and it is evident that this means *can be put in practice by poor villagers without instruction.*"

THE CASE OF EDWARD M. FIELD.

This case is becoming important in its medico-legal relations.

Mr. Field, being under indictment following the failure of his business firm, was brought before the court on a proceeding to test his insanity before trial upon the indictments. The issue was tried by a jury, Mr. Justice Van-Brunt, Presiding Justice in the First Department, presiding.

While the impression that he was insane was general, the jury disagreed, four of their number believing he had simulated insanity.

Justice VanBrunt, as we think wisely, instead of proceeding to a second trial, ordered him placed under observation in the State Insane Asylum at Buffalo, both for treatment and observation, in March, 1892.

He has since remained in that institution, where he was regarded and treated as insane. He has gradually improved, and on the 21st instant he was declared sane by the Superintendent of the institution, and so certified to Judge VanBrunt, who committed him.

The Superintendent certifies: "That he has recovered from his insanity."

He will doubtless be remanded to the toms, and placed upon trial under the indictments, or some of them.

The action of Judge VanBrunt is analogous to the German plan of placing such cases under observation pending judicial investigation.

The wisdom of it is manifest in this case by the results, and we have no doubt the precedent will be followed in the American States.

Conceding the insanity of Mr. Field in March, 1892, the question of his mental responsibility at the time of the acts complained of will be one of great interest and importance.

PERSONAL.

The large influx of railway surgeons into the Medico-Legal Society at its recent meetings is felt in the election of officers for 1894 from their number.

Dr. R. Harvey Reed is elected Vice-President of the society for Ohio; Dr. George Goodfellow, Chief Surgeon of S. P. Railway, for Arizona; Prof. J. E. Owens, Chief Sur-

geon C. & N. Railway Co., of Chicago, for Illinois; Dr. B. F. Wilson, Chairman of the Executive Committee of the National Association of Railway Surgeons, for Missouri. Dr. Granville P. Conn, one of the foremost of American railway surgeons, for New Hampshire; J. B. Murdock, M. D., ex-President of the National Association, for Pennsylvania.

Dr. George Chaffee, Prof. A. M. Phelps, and Thomas H. Manly are elected into offices, with seats in the Executive Committee of the society, and Dr. Nicholas Senn, of Chicago, goes on the Permanent Commission.

Judge Abram H. Dailey accepts a place on the Executive Committee, declining the 1st Vice-Presidency, as did Judge H. M. Somerville and Dr. Matthew D. Field, to give the place to Dr. S. B. W. McLeod, an old and esteemed member of the society, who proposes to take an active interest in the society's work.

Dr. Moses C. White, of New Haven, elected as Microscopist, is a high and recognized authority on the subject.

The number of Vice-Presidents of the society elected at the annual meeting for the States, Territories, and Provinces was eighty-six, thirty-six of whom are residents of foreign states, countries, or provinces, a large increase over last year, and the official list of active members of the society, exclusive of those upon the suspended list for non-payment of dues, is 554, located in nearly every American State and Territory.

SKETCHES OF EMINENT RAILWAY SUR- GEONS, MEDICAL MEN, AND JURISTS.

GEORGE M. STERNBERG, M. D.

SURGEON GENERAL OF UNITED STATES ARMY.

Surgeon General Sternberg was born in New York on June 8, 1838.

Adopting the medical profession, and his tastes inclining to the military service, he offered his services to the government in the war of the rebellion, and was appointed Assistant Surgeon on 28th May, 1861. Served with Army of the Potomac until August, 1862, when he was assigned to hospital at Portsmouth Grove, R. I. In November, 1862, he was detailed as Assistant to the Medical Director of the Department of the Gulf, and served with General Banks's expedition until January, 1864. He was then put in charge of the U. S. Government Hospital at Cleveland, Ohio, where he served until July, 1865, and then was assigned to Jefferson Barracks, remaining there until April, 1866. He was Post Surgeon at Fort Harford, Kansas, up to October, 1867, at the time of the cholera epidemic. From April, 1868, to 1870, he served at Fort Riley, Kansas, in the field, and in the Indian campaign. He was assigned to Fort Columbus, in New York Harbor, in May, 1871, during the yellow fever epidemic.

He was Post Surgeon in Florida, during the epidemic of yellow fever from 1873 to 1875, and in Columbia until 1876, and was Post Surgeon in Walla Walla, Oregon, until May, 1879.

He served in the Nez Perces expedition in 1877; afterwards was on special duty, and was appointed a member of the Yellow Fever Commission. In 1879 he was ordered to the Department of California; served as Post Surgeon from August 10, 1881, to May, 1884; assigned to duty as Army Attending Surgeon at Baltimore in 1884, where he remained in charge until October, 1890; and served at San Francisco at Medical Purveying Depot until February, 1892. He was Army Attending Surgeon at New York City until 30th May, 1893, when he was appointed Surgeon General of the Army, which position he now holds.

Surgeon General Sternberg has an enviable military record, and stands at the head of his profession as a bacteriologist and microscopist. He was Secretary of the Havana Yellow Fever Commission of the National Board of Health. He was assigned to special duty by the Secretary of State and attended the International Health Congress in Rome in 1885; and, under the appointment of the President, he made investigations in Mexico regarding yellow fever in 1887 and 1889. He was appointed Consulting Bacteriologist to the Health Office of the Port of New York in 1892 by the War Department. He has served as President of the American Health Association. He is a member of the American Medical Association, a Vice-President of the American Microscopical Society, and was President of the Section of Army Medicine and Surgery at the Pan-American Congress.

Surgeon General Sternberg is a writer of acknowledged merit and is an authority on bacteria and malaria, on yellow fever and cholera, and on all questions pertaining to health and quarantine. He read recently a paper before the Medico-Legal Society on the Prevention of Cholera, and has consented to take the position the Vice-Chairman of the Section of Railway Surgery of the Medico-Legal Society.

SAMUEL S. THORNE, M. D.

OF TOLEDO, O.

Samuel Springate Thorne, M. D., was born of English parents, in Utica, N. Y., September 22, 1831. He graduated at the Utica Academy with the intention of entering college, but, instead of this, took one year of French, read medicine with Dr. Peleg B. Peckham, Utica, and, after three winter courses and two summer at the Medical Department of the University of the City of New York, graduated in March, 1854, and spent the summer of 1854 as substitute interne at the old New York City Hospital, situated on Broadway, opposite the termination of Pearl street. From New York he went to Milwaukee to practice, remained there three years, his practice the last year largely surgical. While at Milwaukee he married Miss Fannie Peckham, of Utica, N. Y., daughter of his preceptor. In the fall of 1887 he went to Lockport, N. Y., to live; remained there three years; and from there went to Toledo in the fall of 1860, where he entered upon the practice of general medicine. From his tastes and opportunities he drifted into a large surgical practice, and is now almost entirely occupied with general and railway surgical work.

His first railway work was done in the summer of 1855, at Milwaukee, for the Milwaukee and St. Paul and the Milwaukee and La Crosse roads. At Milwaukee he was elected President of the Milwaukee Medical Society; at Lockport, of the Niagara County Medical Society. Soon after going to Toledo, Ohio, his present home, he entered the army as surgeon of 130th O. V. I., and served to the muster out of the regiment. Served one term as Coroner of Lucas

County, and has been on the surgical staff of St. Vincent's Hospital since its foundation, professor of surgery of the North Western Ohio Medical College from its beginning, member of the American Medical Association since 1855, member of the Ohio State Medical Society, the North Western Ohio, the Toledo City and County Society, the S. E. Michigan, 1st Vice-President National Association Railway Surgeons, and several others, including societies of the different railway companies with which he is connected, in all of which he has done his portion of work to sustain them.

Dr. Thorne is now President Ohio State Association of Railway Surgeons, surgeon-in-chief of the Wheeling & Lake Erie, Toledo, St. Louis & Kansas City, and Cincinnati, Jackson & Mackinaw Railway Companies, and division surgeon for the Pennsylvania Company west of Pittsburg, Michigan Central, Toledo, Ann Arbor & North Michigan, and Toledo & Ohio Central Companies, associate on the Columbus, Hocking Valley & Toledo Railroad, and surgeon for the Toledo Consolidated, as well as consulting surgeon to the Wabash Railroad Company.

His immediate family consists of one son and three daughters. The first, Dr. George L. Thorne, is intimately associated with the subject of this sketch in his surgical and railway work.

He was for several years surgical editor of the *Toledo Medical and Legal Journal*. He has done much literary work for medical journals and the different societies with which he has been connected. Dr. Thorne occupies a prominent position among the surgeons of the West.

JOSIAH N. HALL, M. D.

Josiah N. Hall, M. D., was born in 1859, upon a farm in North Chelsea, Mass., received the degree of Bachelor of Science from the State Agricultural College, at Amherst, Mass., in 1878, and that of M. D. from Harvard University in 1882. After serving an eighteen month's term as house officer in the Boston City Hospital, he located at Sterling, Colorado, where he represented the Union Pacific and Burlington Railways as Assistant Surgeon. In 1892 he located in Denver, Colorado, assuming the position of Secretary of the State Board of Medical Examiners, of which he had been President in 1890. He now occupies the chair of *Materia Medica*, Therapeutics, and Clinical Medicine in the University of Colorado.

Dr. Hall is a member of various State and local societies, of the American Medical Association, the National Association of Railway Surgeons, and the Medico-Legal Society of New York. His Medico-Legal work and writings have been almost entirely in the line of gunshot wounds as related to jurisprudence, and in these matters he has figured to a considerable extent as an expert. His four years' training in military science at Amherst, under the instruction of officers detailed from the Regular Army, his location upon the frontier, where firearms were largely used, together with the fact that he is an ardent sportsman, have combined to lead him in this direction.

CHARLES K. COLE, M. D.,

PRESIDENT BOARD MEDICAL EXAMINERS, HELENA, MONTA.

Dr. Charles K. Cole is one of the foremost of the railway surgeons of the Western frontier. He has occupied a prominent position among the surgeons of the National Association of Railway Surgeons, and is a member of its Executive Committee. He resides at Helena, Montana, and is President of the Board of Medical Examiners of Montana.

He combines great business ability with his professional work, and is one of the most active and influential citizens of his State.

He has a brilliant professional career before him.

G. R. HOWARD, M. D.

OF TEXAS.

Dr. G. R. Howard was born in Palestine, Texas, and received his literary education at Randolph Macon College, Ashland, Virginia. Then Dr. Howard went to New Orleans to enter as student at the Medical Department of the Tulane University of Louisiana, from which he graduated with Class of 1889-'90.

Closely following his leaving *Alma Mater*, he accepted the position of assistant house surgeon at I. & G. N. R. R. Hospital at Palestine, Texas, where he remained for about eighteen months, when he resigned so that he might become house surgeon in the Texas and Pacific Railway Hospital at Marshall, Texas, which appointment he now holds and where he at present resides.

J. H. CALVIN, M. D.

HURON, OHIO.

Dr. J. H. Calvin was born at Youngstown, Ohio, August 21, 1841. His early life was spent on a farm, where he pursued his studies, fitting himself for a teacher, by which he earned the means for his education.

He graduated at the Medical Department of Wooster University of Cleveland, Ohio, in March, 1881. Dr. Calvin has ever felt great interest in educational and sanitary measures.

He has been for a long time a member of the Board of Education at Huron, Ohio, where he resides, and has given special attention to medical education, concerning which he has written. He has also studied and written on typhoid fever, inebriety, narcotics, and functions of the brain. He is the inventor of appliances for the helplessly sick and maimed, and an improved splint for fracture of the femur. He was one of the founders of the Northern District Medical Society of Ohio, is a member of the Ohio State Medical Society, of the National Association of Railway Surgeons, of the Medico-Legal Society, and Health Officer of the town of Huron, and local surgeon of the W. & L. E. Railway at Huron, Ohio.

Dr. Calvin, as a surgeon, stands high, and he occupies a prominent position in his profession.

HON. CONWAY W. NOBLE.

JUDGE OF THE COURT OF COMMON PLEAS.

Judge Noble was born October 7th, 1842, at Monroe, Mich. He graduated at the University of Michigan in the class of 1863. The same year he entered the Law office of Ramsey, Backus & Noble, at Columbus, O. He served as a private in the 150th Regiment Ohio State Volunteers, resumed practice of law in 1865 with his brother at Cleveland, O.; afterwards formed a law firm with R. E. Mix, practising under the firm name of Mix & Noble. Taking an interest in Medico-Legal studies in 1867, he was appointed Professor of Medical Jurisprudence in the Medical Department of Worcester University, which position he filled for fourteen years, during which he continued in the active practice of law at Cleveland, O. In 1886 he was elected one of the Judges of the Court of Common Pleas, running upon the Democratic ticket, although in a strong Republican county. At the expiration of his term in 1891, he was re-elected for the term of five years, although a Democrat in a Republican district, which position he now holds. In 1892 he was elected Professor of Medical Jurisprudence in the Medical Department of the Western Reserve University, which position he now fills.

Judge Noble is a member of the Medico-Legal Society, and has long taken an interest in Medical Jurisprudence; is a writer of more than ordinary ability, and has contributed valuable papers to the literature of forensic medicine. Is a forcible and eloquent speaker, and holds a high and notable position on the bench of Ohio.

HON. MILTON BROWN.

OF KANSAS.

Milton Brown was born in 1853, and is now forty years of age. He received an academical education at Knightstown Academy, Knightstown, Indiana. Read law with Elliott & Elliott, at New Castle, Ind., the senior member of firm being ex-Chief Justice of the Supreme Court of Indiana, and was admitted to practice in the Circuit Courts of Indiana in 1875; removed to Kansas in 1884, and located at Garden City, where he re-entered the practice, which has been extensive in Southwestern Kansas and Southeastern Colorado. Mr. Brown has a penchant for medico-legal science and takes great interest in subjects along that line. He is a member of the Medico-Legal Society of New York, of the International Medico-Legal Congress, and has given much study to forensic medicine, and has been engaged in important criminal trials. At the general election in 1892 he was elected State Senator on the Republican ticket, from a district composed of 19 counties and of an area of 130 by 200 miles, by a majority of about 700, notwithstanding there was an adverse fusion majority of about 800 against him on the previous election returns, running several hundred ahead of his ticket. He was one of the foremost fighters against the Anarchistic tendencies of the People's Party in the Senate last winter, is a ready and forcible debater, and was a member of the Judiciary Committee of that body.

CLAYTON M. DANIELS, M. D.

SURGEON ERIE RAILWAY COMPANY.

Born at Panama, Chautauqua County, N. Y., April 2, 1854. Early education received at the Union School at Jamestown, N. Y.

Was graduated from the Medical Department, University of Buffalo, on February 27, 1880, adding supplementary courses in Bellevue Hospital Medical College and University of New York. Located for professional work in Buffalo.

Was a charter member of the Faculty of the Medical Department of Niagara University as Prof. of Anatomy and Clinical Surgery, continuing for five years, voluntarily retiring to give all of his attention to a large and rapidly growing practice.

Spent the winter of 1889-'90 in the hospitals of London, Paris, Berlin, and Vienna, giving special attention to surgery and gynæcology, and, on returning to America, announced his retirement from general practice, to continue in the specialties above named.

Has been actively engaged in railway surgical work for the past eleven years, being now Surgeon-in-Chief of the Western New York & Pennsylvania Railway; also local surgeon at Buffalo for the New York, Lake Erie & Western Railway, Buffalo, Rochester & Pittsburg Railway, New York, Chicago & St. Louis Railway, and Buffalo Creek Railway.

Was prominent in organizing, establishing, and supporting the Emergency Hospital at Buffalo, and is now its chief surgeon.

Was first President of the "Association of Erie Railway

Surgeons," and is a member of many medical, surgical, and scientific societies throughout the United States.

The furthering and continuance of the present electro-execution law of the State of New York was largely aided by Dr. Daniels—even in opposition to the "press," and, at that time, public opinion. He personally attended and directed several of the most successful of the earlier executions, and by his energy and perseverance, combined with his faith in the method as being most humane, he has won the approbation of all, to the extent that now other States and countries are seriously considering its adoption.

He recently read a paper (with photographic illustrations) upon double and triple synchronous major amputations, showing 100 per cent. of recoveries in a total experience of six consecutive cases, with comments upon the same, which has attracted much attention.

Although of large experience in practical professional work, Dr. Daniels has not availed himself of the rich opportunities of his pen, but we understand that he has recently accepted the associate editorship on a prominent surgical journal, and that we may expect to hear from him frequently in the future.

JOSIAH N. HALL, M. D.

SECRETARY STATE BOARD OF MEDICAL EXAMINERS, DENVER, COLORADO.

Josiah N. Hall, M. D., was born in 1859 at North Chelsea, Mass., received the degree of B. S. from the Massachusetts Agricultural College at Amherst in 1878, and that of M. D. from Harvard University in 1882. After serving an eighteen months' term as house physician in the Boston City Hospital, he located at Sterling, Colorado, where for some years he represented the Union Pacific and Burlington and Missouri River Railways as Assistant Surgeon. In 1892 he located in Denver, Colorado, assuming the position of Secretary of the State Board of Medical Examiners, of which he had been President in 1890. He now occupies the Chair of Materia Medica and Therapeutics in the University of Colorado.

His medico-legal work has been almost entirely in the line of gunshot wounds as related to jurisprudence. His four years' training in military at Amherst, under the instruction of officers detailed from the regular army, his location upon the frontier, where firearms were largely used, together with the fact that he is an ardent sportsman, have combined to lead him to investigate this subject.

He is a member of various State and local societies, of the American Medical Association, the National Association of Railway Surgeons, and the Medico-Legal Society of New York.

W. C. LENCE, M. D.,

OF ANNA, ILLINOIS.

Dr. William C. Lence was born in Union County, State of Illinois, September 30, 1844. His parents were of German descent. When Dr. Lence was six years of age his father went to California, leaving him unprovided for, which made his life a struggle. At the age of eighteen years he enlisted in the Federal Army, serving as a private soldier from August, 1862, until the close of the war, in 1865. Receiving his discharge at the age of twenty-one years—his education having been sadly neglected during the whole of his early life—he entered the select school at Jonesboro, Illinois, in the fall of 1865. Two years later he commenced teaching in the public schools of Union County. Three years later he took a preparatory course at Notre Dame College in Indiana. He is a graduate of the Medical Department of the University of Louisville, Ky., and holds a diploma of the Medical Department of that University, issued to him March, 1872.

After graduating he returned to Jonesboro, Illinois, where he diligently and successfully practiced his profession for twenty-two years, until the “political land-slide” struck Illinois, in November, 1892. Early in 1893 Governor Altgeld appointed Dr. Lence Superintendent of the Illinois Southern Hospital for the Insane at Anna, Illinois, which position he is now filling with ability and credit. He takes a deep interest in forensic medicine and is a member of the Medico-Legal Society.

JOURNALS AND BOOKS.

The transactions of the New Hampshire State Medical Society for 1893 is on our table. Thanks to Dr. G. R. Conn, the Secretary.

It contains the transactions, officers, a full list of members, and the papers and reports are very able and interesting.

Dr. Dixi Crosby contributed an able and interesting paper on Hypnotism, with cases cited from his practice of its beneficial results in practice if properly and carefully managed.

THE RAILWAY AGE. This weekly journal contains in its Surgical Department, edited by Prof. R. Harvey Reed, matter of great interest both to railway managers and railway surgeons. It has published in the past numbers a succession of valuable papers from prominent railway surgeons throughout the United States, and we understand that it is contemplated publishing a journal devoted exclusively to railway surgery, as the organ of the National Association of Railway Surgeons.

UNIVERSAL MEDICAL SCIENCES. Sarjous. F. A. Davis Co., publishers, Philadelphia, London, and New York. (1893.)

The chapter on Legal Medicine and Toxicology is by Frank W. Draper, of Boston, Prof. of Medical Jurisprudence in Harvard University. He cites Judge Thayer, of Oregon, on malpractice, in *Langford v. Jones*. Brouardel's evidence in cases of drowning is approved. Laborde, of Paris, on resuscitation, is quoted.

Interesting quotations on sudden death by Knapp, of Boston; Dr. Irish, of Lowell, Mass., and Bonvalo, the volume of Cullere and cases of Rolleston, of St. George Hospital, London.

Interesting citations from Bounette on falls from high places are made.

On personal identity Forgeot's views are cited approvingly, and Paltauf's views and experiments on rigor mortis are given.

Under Toxicological important data of the action of poisons is given, viz.: Aconite, Ammonia, Antifebrine, Arsenic, Cannabis Indica, Cantharides, Cocaine, Exalgin, Fish, Hyoscine, Magnesium, Sulphate, Mercurie Bichloride, Mercury, Nitro Benzol, and various poisons.

The work is in five volumes. The articles on the brain, nervous, and mental diseases are by well-known names. The paper on Microscopic Technicology is by the editor in chief, Dr. Sarjous; also on Histology. The volume on Surgery is able, but we presume in future will give more space to railway surgery, from the pens of some of our members.

We regret that much of our review of Journals and Books is crowded out of the present number.

MAGAZINES.

AMERICAN JOURNAL OF POLITICS. The December number contains a strong array of talent. Our readers will be interested in "A study of the Social Evil," by J. W. Walton, "Should Capital Criminals be Given to the Physiologists?" by Dr. J. S. Pyle, and "Cranks," by Dr. Edward Rollen Griggs and the editor, Andrew J. Palmer.

TEXAS SANITARIAN. The genial and accomplished editor, Dr. T. J. Bennett, has been spending six weeks in New York, and his November number shows it.

Dr. W. A. Gorton, of Oshkosh, gives a breezy address on Utilizing Criminals for Scientific Experimentation. It is a literary *curio*.

A summary of Dr. T. D. Crothers' paper at the Pan-American Congress on the Death Penalty for Criminal Inebriates is given from the *Medical News*.

THE MONTHLY SUMMARY, Elmira, N. Y. This journal is printed in the Elmira Reformatory, and, although young, is the ablest organ of criminality and prison reform in this country. It is most ably edited and conducted.

We have not space to review it at length or speak of half of its excellencies.

Dr. Jules Merio, of Ghent, Belgium, contributes a careful resume of the Belgian System of Mental Treatment of Criminals, which is most interesting. This journal is a credit to the Elmira Reformatory, and while the public press has been filled with sensational accounts of the enforcement of prison discipline, and grave charges have been made by criminals and their friends against the Superintendent, Mr. Brockway, all fair minds must concede that this reformatory is in the very front rank of penal institutions of the civilized world, and that Superintendent Brockway is entitled to the credit of bringing the prison into the prominence which it has attained.

The question of prison discipline is brought forcibly, and to many minds unpleasantly, into prominence by the charges made against Mr. Superintendent Brockway. It may receive legislative attention which the condition of the various prisons of all the American States might be improved by. How far punishment of prisoners in the enforcement of discipline in prisons should be carried is a grave and interesting question.

The fault, if one exists, is very much less in the Elmira Reformatory than in other prisons, and it is not one for which that officer should, as it seems to us, be criticised. It is not the fault of an officer, if a fault, but of the system.

INTERNATIONAL JOURNAL OF SURGERY. This enterprising journal is under the management of J. MacDonald, Jr. It has recently given considerable attention to surgery in its medico-legal relations, and especially in railway surgery. The December number gives in full in this department the annual address of George Chaffee, M. D., a retiring President of the New York State Society of Railway Surgeons, and an extended account of that meeting, and its editorial comment upon "Simulation in Traumatic Neurosis" is an able review of Dr. R. Harvey Reed's paper read before the Medico-Legal Society, which it published in full in its November number.

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TOXICOLOGICAL.

ANNUAL REPORT OF THE CHEMIST OF THE MEDICO-LEGAL SOCIETY.

"TO THE FELLOWS OF THE MEDICO-LEGAL SOCIETY:

At a meeting of the American Chemical Society, held December 31, 1890, in the University of Pennsylvania at Philadelphia, a short paper was presented by Mr. Clark Bell, Esq., requesting the aid and co-operation of that scientific body, with a select committee of the Medico-Legal Society in a movement to secure the appointment of a National chemist and a chemist in each state of the Union, who should be called a state chemist. The committee appointed considered the matter carefully; made a report to the Medico-Legal Society, which was approved and adopted January 14, 1891.

That report was as follows:

"Resolved, That the creation of an official, to be known as the National Chemist, in the service of the Government, with a salary sufficient to command the highest available talent, and the establishment of a thoroughly equipped laboratory, which should be at the disposal of the Government or persons accused of crime, or of the State authorities, under suitable regulations, would be a measure that would reflect credit upon the Nation, greatly assist the authorities in the administration of justice, and elevate the character and standing of expert testimony in the courts."

"Resolved, That the best interests, of the people of the various States of the Union, would be greatly subserved, by creating in each state an official to be known as the State Chemist, with sufficient salary to insure high skill in the discharge of official duty, and by establishing a competent and thoroughly equipped chemical laboratory.

That it be the duty of the State Chemist to act as well for the state and public authorities, as for all accused persons in all criminal trials, at the expense of the State.

All of which is respectfully submitted.

Dated New York, December, 1890.

Signed,

VICTOR C. VAUGHAN, PH. D., Chairman.

H. A. MOTT, Jr., PH. D., LL. D., Analytical Chemist.

GEO. B. MILLER, M. D.,

CLARK BELL, President Medico-Legal Society, *ex-officio*."

Since that time nothing has been done to agitate this important movement, and the matter has entirely rested. No doubt much has been accomplished by this delay, as the wisdom of the reform anticipated is becoming plainly evident, yearly.

There is a growing necessity for such an officer, who shall be closely allied with the Commonwealth and occupy the same relation to the public as the District Attorney and the Coroner. Ere long, public sentiment which is becoming so strong, will have accomplished a radical change in the present system of conducting trials of persons accused of murder by poison. It is about time that scientific bodies anticipated the movement and became active in the matter. We have a State Board of Health and a State Geologist; why not a State Chemist? Are these subjects paramount to the life-interests of humanity?

Look at the splendidly equipped laboratories of the Boards of Health, and see what strides Bacteriology is making. By creating such an official each State would be saved much expense and trials greatly shortened. Take such famous trials as the Buchanon, Meyer, Carlyle Harris and the Fleming, and consider the amounts paid for the array of experts, and the time consumed. The public press is teeming with editorials, comments, etc., upon our present system, and to put it mildly, are criticising medical expert testimony. How can the public be satisfied with such diverse, contradictory opinions of medical experts? The old adage, 'Doctors disagree,' does not console them.

CHEMISTRY IS EXACT.

Chemistry is not an uncertain science, but truly and minutely exact in her laws. Without wishing to cast any reflection upon the eminent scientists who have participated in poisoning trials in the last decade, we must admit that such trials have been marked by much contradic-

tory testimony. This cannot, we must admit, be *entirely* eliminated but we at least can lend a willing hand and be ever ready to introduce new innovations.

Juries composed of laymen are greatly confused by the inexhaustible number of questions put to experts on each side. As it is to-day, before an expert is accepted he is subjected to a regular preliminary examination as to his qualifications, by counsel, the majority of whom have an indefinite knowledge of toxicology—and are simply coached. This fitness should be decided upon before he enters the court room. This system is misleading and confusing, it only blind-folds the jury and plunges them into a deeper maze of thought and doubt.

Every possible means are taken to cast a suspicion of doubt upon good, sound, truthful scientific statements, these are combated and instead of obtaining the "truth, etc., the first obligation of a witness, the foundations of equity are shaken and justice perverted. We have then introduced *strained* evidence. This may not be exactly illegal but does it enable a jury to come to a just conclusion?

Lately, I heard an eminent and venerable judge in Philadelphia, address a jury with the remark "That much of the testimony is worthless, counsel purposely introduce evidence to mislead and confuse you." Many now famous and dangerous criminals openly mingle with us in public life, given liberty by paid experts, whose testimony was given scientifically but not conscientiously.

A verdict ought not to hinge upon the pecuniary resources of the party accused and consequently the power to procure a battle of experts. Chemical evidence is most essential, and usually takes the rank of first importance. We may readily see how necessary it is for us to preserve

its high standing and dignity, and therefore suggest that in the future deliberations of the Society, we give more attention to the agitation of the question of the propriety of creating State Chemists.

Philadelphia.

GEORGE B MILLER, M. D.

ANNUAL REPORT OF THE MICROSCOPIST OF THE MEDICO-LEGAL SOCIETY.

Late in the evening of February 17th, 1897, the body of a woman was found on track A of N. Y. & N. H. Rail Road, about 3,000 feet east of East Norwalk depot, by the engineer of a freight train on track B. If the body had not been discovered it would, in a few minutes, have been struck by an express train going east on track A. The man who found the body soon decided, from many wounds on the head and neck, that a murder had been committed. The Medical Examiner was called and also the Coroner. The body was removed to South Norwalk and later was identified as that of Mrs Carmela Maria Fuda, of Stamford, whose husband Guiseppi Fuda and Nicodemi Imposino had been seen with the woman to go on the train between 9 and 10 P. M., from Stamford to East Norwalk where they left the cars. It was found that Mr. Fuda left Stamford the next morning for New York City where he was arrested, and Imposino was traced to Buffalo. Both men were brought back to Connecticut and lodged in the jail at Bridgeport. They were indicted for murder and at the May term of court both were convicted of murder in the first degree and sentenced to death.

In this trial a coat of Mr. Fuda, found in his house at Stamford, with stains supposed to be blood and a common nail hatchet, or shingling hatchet, found about 250 feet from the scene of the murder, two days afterwards; became important links in the chain of circumstantial evidence relied upon to secure conviction of one or both persons. The coat and the axe were given to the writer to

determine whether the stains were human blood. The coat was a very dark blue diagonal of very coarse harsh wool considerably worn, with many fine spatters or stains on the right sleeve and some other parts. A considerable part of the coat it is believed had been washed and the suspected stains were but faintly visible. The axe, or hatchet had lain in the snow two days and the stains were much changed by the action of snow; but a number of hairs were sticking to the blade and handle.

I took some hair from the head of the murdered woman and secured pieces of her bloody shawl and other clothing which had been cut through by the fatal blows on her head, neck and shoulders. With these materials I commenced the investigations.

About a dozen long black hairs found on the axe were mounted between plates of glass and compared with similar long black hairs taken from the head and shawl. In color and diameters the hairs from the head and from the axe were apparently alike. On the axe and handle I found about twenty short pieces of wood fibre of a bright scarlet color, a few fibres (very short) of bright blue colored wool, some brown and also white fibres of wool and a few fibres of cotton. All these fibres were very short as seen by the naked eye but of very appreciable length as seen by the microscope. Red and blue fibres of wool were found in the structure of the shawl. Grey and white wool were found in the parts of the dress which had been cut through.

Next came the examination of the stains on the coat and on the axe. By the guaicum test it was found that the reaction was like that of blood. The micro-spectroscope gave the characteristic absorption bands, proving the presence of blood on the axe (blade and handle) and also on the coat.

From the under side of the hatchet, as it had lain on the snow, no blood corpuscles were recovered.

From the side of the hatchet which had been uppermost and from the handle specks of stain material were scraped off and moistened with water containing one-seventh part of glycerine and thirty-eight blood corpuscles were carefully measured in the microscope and were found to have an average diameter of $7\frac{2.5}{100}$ of a mikron or $1\frac{1.8}{100}$ (1.18) mikrons larger than the average of 100 corpuscles of fresh blood from the pig measured for comparison.

Portions of stain from Fuda's coat furnished in the same manner 112 corpuscles with an average diameter of 7.26 mikrons, or 1.19 mikrons larger than the average obtained from the fresh blood of the pig.

The largest ten corpuscles, consecutively measured, from Fuda's coat had an average diameter of 7.8 mikrons while the largest ten from the pig averaged 6.46 mikrons and the smallest ten from the coat measured 6.58.

Thus it was shown that the *smallest* ten from the coat were larger by 0.12 mikron than the *largest* ten from the pig. With this result it was clear that the stain on the axe and on the coat were alike, and neither could be the blood of a pig. If these stains were not the blood of the pig for still stronger reasons they could not be from the ox, horse, sheep, or goat; all of whose blood corpuscles are acknowledged to be smaller than the blood of the pig.

As for the blood of the dog, I was free to admit that I could not by measurement distinguish the blood of the dog from the blood of the human being.

I next measured the masses of clotted blood on the shawl and dress of the murdered woman and measured sixty corpuscles and found their average diameter 7.25 mikrons which is exactly the average diameter of the blood corpuscles taken from the axe. This proved that the stains

on the axe and on the coat were almost exactly identical with the blood on the clothing of Mrs. Fuda.

Now considering that in addition to the microscopic measurements we have had from the axe about twenty long hairs of a woman, twelve fibres of scarlet wool and four fibres of wool of a bright blue exactly like the fibres of Mrs. Fuda's shawl which had been cut through; I was satisfied beyond any reasonable doubt, I might almost say beyond any possible doubt, that the stains on the axe were human blood and made by the blood of the murdered woman. So also the stains on the coat of Fuda (the prisoner on trial) were like the blood found on Mrs. Fuda's shawl.

Before commencing this examination I had suspected from statements in regard to the deceased Mrs. Fuda that her blood corpuscles might be different from normal blood. This suspicion led me to take especial pains to obtain her clothing for comparison with the stains on her husband's clothing and on the axe. It was well I did so for as my report shows the blood corpuscles from the axe and from the prisoner's coat and from Mrs. Fuda's clothing when examined in glycerine water all (each collection) measured less than the accepted average of normal human red blood corpuscles, viz:

Red blood corpuscles from Fuda's coat averaged 7.26 mikrons.

Red blood corpuscles from the axe averaged 7.31 mikrons.

Red blood corpuscles from Mrs. Fuda's clothing 7.25 mikrons.

Commonly accepted average for human blood 7.90 mikrons.

This small average measurement might be accounted for by the corpuscles swelling up so as to be spherical or by using excess of glycerine which in some circumstances might prevent their attaining their normal size; but it is of especial interest to note that during the last year a statement has been published by Richard C. Cabot, M. D., of Boston, showing that the eminent scientist Gram has found that the inhabitants of Southern Europe (Italians

included) have red blood corpuscles averaging less diameter than the inhabitants of central and Northern Europe. Gram is quoted as reporting the average diameter of Italian red blood corpuscles at 7 or 7.5 mikrons, German red blood corpuscles 7.8.10 mikrons while red corpuscles of Norwegians average 8.5 mikrons.

At the Centennial Exhibition Dr. Richardson collected the blood corpuscles of fourteen different nationalities and found all those persons having blood substantially alike, the general average being $\frac{1}{3224}$ of an inch or 7.879 mikrons. He measured only one-half the dark border of the corpuscles. If he had measured the whole of the dark border his average would have been 8.036 mikrons.

The report I have given in the Fuda case and the statement of Gram as compared with the report of Dr. Richardson, in 1876, open an important question in Legal Medicine calling for further investigation.

MOSES C. WHITE, M. D.,
New Haven, Conn.

ANNUAL REPORT OF THE TOXICOLOGIST OF THE MEDICO-LEGAL SOCIETY.

TO THE PRESIDENT OF THE MEDICO-LEGAL SOCIETY.

The year that is drawing to a close has been an average one in scientific advancement. The recent experiments of Prof. Woodridge promise to be of importance in future Medico-Legal investigations. However, much remains to be done especially in establishing the detection of bacteria cultures in case they should be intentionally administered for criminal purposes.

This year we have to mourn the loss of the venerable and highly esteemed co-laborer Prof. Wormley. By his death science has been deprived of a devout and earnest worker.

Thanking you for the honor you have seen fit to bestow on me, I have to the best of my ability endeavored to further the interests of the Medico-Legal Society.

Respectfully yours,

W. B. McVEY.

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